STATE OF NEW MEXICO
BEFORE THE ENVIRONMENTAL IMPROVEMENT BOARD

IN THE MATTER OF:

PROPOSED NEW REGULATION,
20.2.50 NMAC – OIL AND GAS SECTOR –OZONE PRECURSOR POLLUTANTS **No. EIB 21-27 (R)**

INDEPENDENT PETROLEUM ASSOCIATION OF NEW MEXICO CLOSING ARGUMENTS AND PROPOSED STATEMENT OF REASONS

January 20, 2022

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The Independent Petroleum Association of New Mexico ("IPANM"), pursuant to 20.1.1.104 NMAC and the Procedural Orders issued August 25, 2021 and November 22, 2021, hereby submits its Closing Arguments, proposed final changes to 20.2.50 NMAC ("Part 50"), and Statement of Reasons. IPANM recommends that the Environmental Improvement Board ("EIB" or "Board") reject the New Mexico Environment Department's ("NMED" or the "Department") proposed plan for assuring attainment or maintenance of the federal National Ambient Air Quality Standard ("NAAQS") for ozone and either delay deciding on the proposed rule until the plan is adopted, or in the alternative, adopt the 20.2.50 NMAC as proposed by IPANM in Exhibit A.

INTRODUCTION

IPANM is an association of independent oil and natural gas producers in New Mexico. IPANM works to protect, defend, and promote the oil and gas industry in New Mexico. As part of its mission, IPANM is an active member in the industry community that partakes in the public rulemaking process in New Mexico. Members of IPANM participated in the stakeholder engagement process for this rulemaking as members of the Methane Advisory Panel ("MAP") and by providing comments to NMED. IPANM also participated in the Four Corners Air Quality Task Force. IPANM believes its participation in this rulemaking process is critical for achieving a well-balanced Part 50.

IPANM supports well-balanced and effective regulations to control ozone from oil and gas operations in New Mexico. IPANM does not oppose regulations necessary to assure that areas of the state with a design value greater than 95 percent of the federal ozone NAAQS do not exceed the NAAQS. However, IPANM does not believe that the regulation of VOC emissions from the oil and gas sector alone will accomplish that task. IPANM's review of the proposed regulations shows that the regulations are primarily directed at reducing VOC emissions. A reduction in VOC

emissions will not significantly lower ozone concentrations in the Southeast and Northwest regions of New Mexico or assure that the areas do not become nonattainment areas for ozone. Further, its review of regulations shows that the proposed NOx reductions will have little impact on ozone concentrations. Most of the ozone in the Southeast and Northwest areas of the state are attributable to sources (natural and anthropogenic) that are outside the state and the Board's authority.

STANDARD OF DECISION

This rulemaking process is governed by the Air Quality Control Act ("Air Act"), Section 74-2 NMSA, and the Board's rulemaking regulations, 20.1.1 NMAC. The Board is obligated to adopt rules consistent with the Air Act "to attain and maintain [NAAQS] and prevent or abate air pollution.[1]" NMSA 1978, § 74-2-5(B)(1) (2021). Section 74-2-5(C) provides in relevant part:

> If the environmental improvement board . . . determines that emissions from sources within the environmental improvement board's jurisdiction . . . cause or contribute to ozone concentrations in excess of ninety-five percent of the primary national ambient air quality standard for ozone promulgated pursuant to the federal act, the environmental improvement board . . . shall adopt a plan, including rules, to control emissions of oxides of nitrogen and volatile organic compounds to provide for attainment and maintenance of the standard. Rules adopted pursuant to this subsection shall be limited to sources of emissions within the area of the state where the ozone concentrations exceed ninety-five percent of the primary national ambient air quality standard.

§ 74-2-5(C).

Under the Air Act and the Board's regulations, "[a]ny person may file a petition with the Board to adopt, amend or repeal any regulation within the jurisdiction of the Board." 20.1.1.300 NMAC. The Board "shall determine, at a public meeting occurring at least 15 days and no later than 60 days, after receipt of the petition, whether or not to hold a public hearing on the

[1] The Air Act defines "air pollution" as "the emission, except emission that occurs in nature, into the outdoor atmosphere of one or more air contaminants in quantities and of a duration that may with reasonable probability injure human health or animal or plant life or as may unreasonably interfere with the public welfare, visibility or the reasonable use of property." NMSA 1978, § 74-2-2(B) (2001).

proposal. Any person may respond to the petition either in writing prior to the public meeting or in person at the public meeting." "If the board determines to hold a public hearing on the petition, it may issue such orders specifying procedures for conduct of the hearing, in addition to those provided by this part, as may be necessary and appropriate to fully inform the board of the matters at issue in the hearing or control the conduct of the hearing. Such orders may include requirements for giving additional public notice, holding pre-hearing conferences, filing direct testimony in writing prior to the hearing, or limiting testimony or cross-examination." 20.1.1.300(C) & (D) NMAC.

When the Board makes its rules, it must give appropriate weight to all facts and circumstances, including:

> (1) character and degree of injury to or interference with health, welfare, visibility and property;
> (2) the public interest, including the social and economic value of the sources and subjects of air contaminants; and
> (3) technical practicability and economic reasonableness of reducing or eliminating air contaminants from the sources involved and previous experience with equipment and methods available to control the air contaminants involved.

§ 74-2-5(F).

Finally, before the Board adopts a rule that is to be more stringent than the federal act or regulations, the Board must "make a determination, based on substantial evidence and after notice and public hearing, that the proposed rule will be more protective of public health and the environment." § 74-2-5(G).

DISCUSSION

I. If an area exceeds 95% of the ozone NAAQS, the Air Act requires the Board to adopt a plan, which can include regulations, to assure that the area does not become a nonattainment area, or if the area is nonattainment, it will attain and maintain the NAAQS.

Section 74-2-5(C) requires the Board to "adopt a plan, including rules, to control emissions of oxides of nitrogen and volatile organic compounds to provide for attainment and maintenance of the ozone NAAQS. Rules adopted pursuant to this subsection shall be limited to sources of emissions within the area of the state where the ozone concentrations exceed ninety-five percent of the primary national ambient air quality standard." *Id.* While the Air Act requires the Board to adopt a plan for controlling ambient ozone concentrations, it fails to specify what sort of "plan" must be adopted. Additionally, there is no guidance in the statute of what should be included in this plan. Without understanding what the plan for control of ozone is, it is impossible to effectively evaluate the need for the proposed regulations and how they fit into a broader overall plan.

Without any guidance in the New Mexico statutes as to what should constitute a "plan" for reducing ozone concentrations in areas that exceed 95% of the NAAQS, the Board should consult the well-developed federal requirements that states must follow in preparing their implementation plans to assure the attainment and maintenance of the NAAQS. Section 110 of the federal Clean Air Act requires that the State Implementation Plan ("SIP") include "a plan which provides for implementation, maintenance, and enforcement of such primary standard in each air quality control region (or portion thereof) within such State." 42 U.S.C. § 7410(a)(1) (1990). The requirements include the following: enforceable emission limits, appropriate control equipment, collection of monitoring data, required emission reports amongst many other steps. 42 U.S.C. § 7410(a)(2).

Additionally, Section 172 of the federal Clean Air Act specifies requirements for areas designated as nonattainment with the NAAQS. It requires that nonattainment area plans:

> (1) In general
>
> Such plan provisions shall provide for the implementation of all reasonably available control measures as expeditiously as practicable (including such reductions in emissions from existing sources in the area as may be obtained through the adoption, at a minimum, of reasonably available control technology) and shall provide for attainment of the national primary ambient air quality standards.
>
> (2) RFP
>
> Such plan provisions shall require reasonable further progress.
>
> (3) Inventory
>
> Such plan provisions shall include a comprehensive, accurate, current inventory of actual emissions from all sources of the relevant pollutant or pollutants in such area, including such periodic revisions as the Administrator may determine necessary to assure that the requirements of this part are met.
>
> (4) Identification and quantification
>
> Such plan provisions shall expressly identify and quantify the emissions, if any, of any such pollutant or pollutants which will be allowed, in accordance with section 7503(a)(1)(B) of this title, from the construction and operation of major new or modified stationary sources in each such area. The plan shall demonstrate to the satisfaction of the Administrator that the emissions quantified for this purpose will be consistent with the achievement of reasonable further progress and will not interfere with attainment of the applicable national ambient air quality standard by the applicable attainment date.
>
> (5) Permits for new and modified major stationary sources
>
> Such plan provisions shall require permits for the construction and operation of new or modified major stationary sources anywhere in the nonattainment area, in accordance with section 7503 of this title.
>
> (6) Other measures
>
> Such plan provisions shall include enforceable emission limitations, and such other control measures, means or techniques (including economic incentives such as fees, marketable permits, and auctions of emission rights), as well as schedules and timetables for compliance, as may be necessary or appropriate to provide for attainment of such standard in such area by the applicable attainment date specified in this part.
>
> (7) Compliance with section 7410(a)(2)

> Such plan provisions shall also meet the applicable provisions of section 7410(a)(2) of this title.
>
> (8) Equivalent techniques
>
> Upon application by any State, the Administrator may allow the use of equivalent modeling, emission inventory, and planning procedures, unless the Administrator determines that the proposed techniques are, in the aggregate, less effective than the methods specified by the Administrator.
>
> (9) Contingency measures
>
> Such plan shall provide for the implementation of specific measures to be undertaken if the area fails to make reasonable further progress, or to attain the national primary ambient air quality standard by the attainment date applicable under this part. Such measures shall be included in the plan revision as contingency measures to take effect in any such case without further action by the State or the Administrator.

42 U.S.C. § 7502(c) (1990) (emphasis added).

Regulatory requirements for implementation of the 2015 ozone NAAQS into SIPs are laid out in 40 C.F.R. 51 Subpart CC, including requirements for areas not attaining the 2015 NAAQS. *See* Memo from Janet McCabe, EPA to Regional Administrators, dated October 1, 2015, *"Implementing the 20 I 5 Ozone National Ambient Air Quality Standards."* https://www.epa.gov/sites/default/files/2015-10/documents/implementation_memo.pdf. Requirements for emissions inventories are described in 40 C.F.R. § 51.1315. This regulation details how often an emission inventory needs to be submitted, what values are to be included, and the boundaries of the inventory. *Id.* The federal requirements, both statutory and regulatory, are specific with often quantifiable requirements to be included in a SIP. This allows the SIP to be a high quality document that is effective in its goal of reducing air pollution and maintaining ambient air quality standards. The Board has already adopted requirements for permitting in nonattainment areas: major sources in nonattainment areas, 20.2.79 NMAC, and minor sources in nonattainment areas, 20.2.72.216 NMAC.

NMED has proposed the Ozone Advance Path Forward document as the "plan" required under Section 74-2-5(C). **NMED Ex. 4** at 11. As explained during the hearing, this document is inadequate to serve as any sort of effective plan. It simply categorizes the actions taken to date to address ozone. *See generally* **NMED Am. Ex. 4**. The NMED Plan is also not forward-looking. It fails to discuss how use of a regulatory scheme and the various public involvement programs will work to further reduce ozone levels in the state. An effective plan is one that works to address *all* aspects of the ozone levels in the state, rather than piecemeal regulations targeting certain industries. Such a generic document could not have been what the Legislature intended when it required the Board to adopt a plan to address the emission of ozone precursors, NOx and VOCs.

IPANM believes that the Board should look to the requirements of the Clean Air Act SIPs requirements, discussed above, as well as the New Mexico SIP, when formulating an ozone plan. The New Mexico SIP is found at 40 C.F.R. 52 Subpart GG. The statutory requirement for an ozone plan is approved in the New Mexico SIP. *See* Air Plan Approval; New Mexico; Infrastructure for the 2015 Ozone National Ambient Air Quality Standards and Repeal of State Regulations for Total Suspended Particulate, 84 Fed. Reg. 49057 (Sept. 18, 2019); Air Plan Approval; New Mexico; Approval of Revised Statutes; Error Correction, 84 Fed. Reg. 6334 (Feb. 27, 2019). In attainment areas, SIPs require "implementation, maintenance, and enforcement of such primary standard in each air quality control region (or portion thereof) within such State." 42 U.S.C. § 7410(a)(1). The ozone plan should discuss the existing requirements and explain why additional requirements are necessary and appropriate. Creating an adequate and detailed plan benefits all stakeholders as it allows for assurances that the most impactful types of measures are being implemented to deal with ozone levels as opposed to piecemeal regulations that unjustifiably target only certain industries.

II. Modeling shows ambient concentrations under the 2028 base case with no additional controls meets the NAAQS; therefore, the proposed controls are not necessary.

The Board is charged with taking action to "attain and maintain NAAQS." § 74-2-5(B). Modeling completed for the purpose of this rulemaking currently shows that under the 2028 base case, with no additional controls from oil and gas sources, including the controls required by proposed 20.2.50 NMAC, the 2015 ozone NAAQS will be met. Therefore, because the ozone NAAQS will be met without the proposed controls, the regulations are not necessary.

Extensive modeling and reviews of modeling was completed for this rulemaking. A review of the uncontrolled, 2028 Base Case shows that ozone concentrations at all the existing ambient air monitors will be below the current 70 ppb 2015 ozone NAAQS. **IPANM Ex. 8**, at IPANM_0082; **NMED Ex. 17** at 78. Of the monitors used for this analysis, only two will be above the 95% threshold design value, Desert View in Dona Ana County and Carlsbad in Eddy County. **IPANM Ex. 8**, at IPANM_0082. Desert View will have a design value of 67 ppb and Carlsbad will have a design value of 66.7 ppb. *Id.* If additional oil and gas controls are implemented under the proposed rule, Desert View's design value drops to 66.8 ppb and Carlsbad's design value drops to 66.4 ppb. *Id.* Desert View then remains over the 95% threshold, while Carlsbad drops just below it. This data is illustrative of the fact that additional controls on oil and gas yield only miniscule declines in ozone design values.

III. Methane is an irrelevant consideration in a rulemaking about VOC and NOx, precursors to ozone formation.

"The subject matter jurisdiction of an administrative agency is defined by statute, and an agency is limited to exercising only the authority granted by statute." *Helmerich & Payne Int'l Drilling Co. v. New Mexico Taxation & Revenue Dep't*, 2019-NMCA-054, ¶ 6. "The Legislature may delegate legislative powers to administrative agencies but in so doing, boundaries of authority

must be defined and followed." *Wilcox v. New Mexico Bd. of Acupuncture & Oriental Med*., 2012-NMCA-106, ¶ 7.

It is long-standing New Mexico law that "[a]n administrative agency has no power to create a rule or regulation that is not in harmony with its statutory authority." *Wilcox*, 2012-NMCA-106, ¶ 7; *Rivas v. Bd. of Cosmetologists*, 1984-NMSC-076, ¶ 3, 101 N.M. 592, 593. "Administrative bodies are creatures of statutes. As such they have no common law or inherent powers and can only act as to those matters which are within the scope of authority delegated to them." *Pub. Serv. Co. of New Mexico v. New Mexico Envtl. Improvement Bd*., 1976-NMCA-039, ¶ 7, 89 N.M. 223, 226. "They can act only on matters that are within the scope of the authority that a statute has delegated to them either expressly or by necessary implication." *City of Albuquerque v. Am. Fed'n of State, Cnty. & Mun. Emps. Loc. 1888*, 2015-NMCA-023, ¶ 8 (internal quotations omitted). An administrative agency is not allowed "to amend or enlarge its authority under the guise of making rules and regulations." *Pub. Serv. Co. of New Mexico*, 1976-NMCA-039, ¶ 10.

"Whether an administrative body has acted beyond the scope of its authority is a question of statutory construction that [the New Mexico Court of Appeals] review de novo." *City of Albuquerque*, 2015-NMCA-023, ¶ 9. The Court examines the plain meaning of a statute to determine its legislative intent or purpose. *Gen. Motors Acceptance Corp. v. Anaya*, 1985-NMSC-066, ¶ 15, 103 N.M. 72, 76; *Old Abe Co. v. New Mexico Min. Comm'n*, 1995-NMCA-134, ¶ 18, 121 N.M. 83, 90. "Unless a contrary intent is clear, courts will read and give effect to statutes as written, attributing to the words their plain meaning." *Waksman v. City of Albuquerque*, 1984-NMSC-114, ¶ 8, 102 N.M. 41, 43.

New Mexico courts follow the plain-meaning rule of statutory construction "where the language is unambiguous." *Inv. Co. of the Sw. v. Reese*, 1994-NMSC-051, ¶ 13, 117 N.M. 655,

658. It will "not read into a statute or ordinance language which is not there, particularly if it makes sense as written." *Sw. Org. Project v. Albuquerque-Bernalillo Cnty. Air Quality Control Bd.*, 2021-NMCA-005, ¶ 11. The court only looks beyond the four corners of the statute "when the literal wording of the language runs counter to the apparent intent of the statute, or when it creates consequences that the legislature could not have desired, or when the literal meaning leads to conclusions that are unjust or nonsensical." *Reese*, 1994-NMSC-051, ¶ 13 (internal citations omitted).

A. The Board is limited to the express provisions of its statutory mandate in its rulemaking capacity.

In this rulemaking, the Board would exceed its statutory authority if it predicates adoption of any portion of Part 50 based primarily on methane reductions. The language of Section 74-2-5(C) is self-evident:

> If the environmental improvement board or the local board determines that emissions from sources within the environmental improvement board's jurisdiction or the local board's jurisdiction cause or contribute to ozone concentrations in excess of ninety-five percent of the primary national ambient air quality standard for ozone promulgated pursuant to the federal act, ***the environmental improvement board or the local board shall adopt a plan, including rules, to control emissions of oxides of nitrogen and volatile organic compounds to provide for attainment and maintenance of the standard.***[2]

(Emphasis added). Stated another way, the Board must regulate NOx and VOC when the condition in Section 74-2-5(C) is triggered. As the language in Section 74-2-5(C) is clear and unambiguous

[2] Methane is chemically and statutorily distinct from NOx and VOC. Methane (CH4) is a hydrocarbon that is a primary component of natural gas. 20.2.2.7(S) NMAC. https://www.epa.gov/gmi/importance-methane. NOx means oxides of nitrogen. 42 U.S.C.A. § 7602(v) (West). VOC means volatile organic compound, as defined by the Administrator. 42 U.S.C.A. § 7602(s) (West). "Volatile organic compound (VOC)" means any organic compound which participates in atmospheric photochemical reactions; that is, any organic compound other than those which the administrator designates as having negligible photochemical reactivity. 20.2.2.7(AS) NMAC. "This includes any such organic compound *other than the following, which have been determined to have negligible photochemical reactivity: Methane*[.]" 40 C.F.R. § 51.100(s)(1).

as written, the plain meaning must be followed, and the Board may not "read into a statute or ordinance language which is not there." *See Sw. Org. Project,* 2021-NMCA-005, ¶ 11.

B. The Board may not formulate its rules based on reasons outside of its statutory mandate.

The Board may not predicate a rule beyond the reasons expressed in its statutory mandate. *See Pub. Serv. Co. of New Mexico*, 1976-NMCA-039, ¶ 10. In *Pub. Serv. Co. of New Mexico*, the Board adopted a rule limiting sulfur dioxide emissions from the San Juan Generating Station and the Four Corners Power Plant to create "more room . . . for new industry in the Four Corners Area." 1976-NMCA-039, ¶ 6. PNM and others challenged the regulation as "not in accordance with law." *Id*. ¶ 2; *see also* § 74-2-9(C). In reviewing whether the Board exceeded its statutory authority, the Court found that its legislative mandate was "[to] prevent or abate air pollution" and that the ambient air quality standard established the concentration at which sulfur dioxide constituted air pollution. *Id*. ¶¶ 6-7.

The Court held in *Pub. Serv. Co. of New Mexico* that "[t]here is nothing in the board's mandate that gives it the authority to plan for the industrial development of the area or any other area in the State." 1976-NMCA-039, ¶ 10. The Court found that "the Board's enactment of the regulation is not in accordance with the law." *Id*. ¶ 2. While the *Pub. Serv. Co. of New Mexico* Court acknowledged that regulations impact industrial development, "such an impact should be as a consequence[,] not by design." *Id*. ¶ 10.

Here, the Department's Statement of Reasons makes all too clear that certain proposed provisions in Part 50 are intentionally designed to reduce methane: "The emissions standards, operational standards, and requirements for monitoring, recordkeeping, and reporting in Part 50 will also result in significant reductions in methane emissions from the oil and gas sector." Statement of Reasons at 5. If the Board bases approval of the regulations in Part 50 on methane

reductions, its actions will impermissibly enlarge its statutory authority and will not be in accordance with law.[3] *See Pub. Serv. Co. of New Mexico*, 1976-NMCA-039, ¶ 10; § 74-2-9(C); *New Mexico Oil Conservation Comm'n*, 2016-NMCA-055, ¶ 25.

Section 74-2-5(E)(3) permits the Board "to give . . . weight it deems appropriate to all facts and circumstances, including . . . technical practicability and economic reasonableness of reducing or eliminating air contaminants from the sources involved and previous experience with equipment and methods available to control the air contaminants involved." The term "appropriate," however, limits the Board's consideration of facts and circumstances to the express language of the legislative mandate—to regulate NOx and VOC emissions for controlling ozone concentrations in areas that exceed 95% of the NAAQS. § 74-2-5(C). In making the rules for oil and gas facilities, the Board may not rely on methane reductions as its primary basis for the underlying regulations after it has chosen to regulate NOx and VOC as its control option.

C. The Notice of Rulemaking Hearing does not include a possible action of adopting rules and regulations that pertain to and are supported by methane regulations.

Lastly, the Board's Notice of Rulemaking Hearing to Consider Adoption of Proposed 20.2.50 NMAC, EIB 21-27(R) (the "Notice"), is limited to NOx and VOCs and does not apprise the public or the regulated entities about the Board's possible action of adopting rules and regulations that pertain to and are supported by methane reductions. The U.S. Supreme Court has held that "[t]hose who are brought into contest with the Government in a quasi-judicial proceeding aimed at the control of their activities are entitled to be fairly advised of what the Government proposes and to be heard upon its proposals before it issues its final command." *United States v. Florida E. Coast Ry. Co.*, 410 U.S. 224, 243 (1973).

[3] IPANM concedes that the Board may have the authority to regulate methane emissions, but not under Section 74-2-5(C).

> The notice of a proposed EIB rulemaking must include, among other requirements:
>
> (1) The subject of the proposed rule, including a summary of the full text of the proposed rule and a short explanation of the purpose of the proposed rule; (2) a citation to the specific legal authority authorizing the proposed rule and short explanation of the proposed rule[.]"

20.1.1.301(B)(1)-(2) NMAC.[4] Administrative due process in New Mexico requires "fairness, ensuring that the public is notified about a proposed government action and afforded the opportunity to make its voice heard before that action takes effect." *Rayellen Res., Inc. v. New Mexico Cultural Properties Review Comm.*, 2014-NMSC-006, ¶ 28; *Uhden v. New Mexico Oil Conservation Comm'n*, 1991-NMSC-089, ¶ 10, 112 N.M. 528, 530, 817 P.2d 721, 723 ("Administrative proceedings must conform to fundamental principles of justice and the requirements of due process of law.").

Similarly, in a formal adjudication under the federal APA, a federal agency must inform the persons entitled to notice of an agency hearing regarding: "(1) the time, place, and nature of the hearing; (2) the legal authority and jurisdiction under which the hearing is to be held; and (3) the matters of fact and law asserted." 5 U.S.C.A. § 554(b) (West). For an administrative agency to satisfy federal due process in a formal adjudication, "notice must be given that is reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections.'" *Spartan Mills v. Bank of Am. Illinois*, 112 F.3d 1251, 1257 (4th Cir. 1997) (citing *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 314 (1950)). The agency must also "give the party charged a clear statement of the theory on which the agency will proceed with the case." *Yellow Freight Sys., Inc. v. Martin*, 954 F.2d 353, 357 (6th Cir. 1992).

[4] Notably, the Notice also clarifies that the Board is acting pursuant to Section 74-2-5(C), thereby confirming that its sole statutory mandate is "to control emissions of oxides of nitrogen and volatile organic compounds to provide for attainment and maintenance of the [ozone] standard."

The Notice does not apprise the public that the Board intended to regulate methane emissions. *See* 20.1.1.301(B)(1) NMAC; *Florida E. Coast Ry. Co*., 410 U.S. at 243; *Rayellen Res., Inc*., 2014-NMSC-006, ¶ 28. The Notice simply states: "The proposed regulations at Part 50 would reduce emissions of ozone precursor pollutants (oxides of nitrogen and volatile organic compounds) from sources in the oil and gas sector located in areas of the State within the Board's jurisdiction that are experiencing elevated ozone levels." Notice at 1. It is silent on how Part 50 will regulate methane emissions and does not provide a "clear statement on the theory on which the agency will proceed with its case." *See Yellow Freight Sys., Inc. v. Martin,* 954 F.2d at 357. The Notice failed to disclose that "the nature of the hearing" would involve methane reductions. *See* U.S.C.A. § 554(b) (West). Because it does not identify regulation of methane emissions as the subject of the rulemaking, it effectively precludes the public or regulated entities from meaningful participation related to methane emissions. For this reason, any Board action regulating methane emissions, or justified by regulating methane, deviates from the legislative purpose of Section 74-2-5(C) and is thereby not in accordance with law. *See* Section 74-2-9(C); *Old Abe Co.*, 1995–NMCA–134, ¶ 10.

IV. The Board may only promulgate rules or regulations that are no more stringent than necessary to maintain the statutory standard.

Under the Air Act, the Board may not promulgate a rule or regulation that is no more stringent than necessary to maintain the ambient air quality standard. *See Pub. Serv. Co. of New Mexico*, 1976-NMCA-039, ¶ 19; *Kennecott Copper Corp. v. New Mexico Envtl. Imp. Bd*., 1980-NMCA-007, ¶ 9, 94 N.M. 610, 613, 614 P.2d 22, 25, *writ quashed sub nom. Kennecott Copper Corp. v. New Mexico Envtl. Improvement Bd*., 94 N.M. 675 (1980) ("The Board there [in *Public Service Co*.] established a standard and then adopted regulations that required performance far beyond that necessary to meet the standard.").

The Board is bound by the ambient air quality standard and "may not . . . adopt regulations implementing or explaining it for any reason other than to [maintain the standard]." *Pub. Serv. Co. of New Mexico*, 1976-NMCA-039, ¶ 19. As discussed above (*supra* IV), in *Pub. Serv. Co. of New Mexico.*, the Board adopted regulations related to sulfur dioxide reductions based on "new industry in the Four Corners" and "for New Mexico to regain control over its air in the Four Corners region." 1976-NMCA-039, ¶¶ 10-11. The Court held that these reasons were not in accordance with law because the Board's mandate does not provide the Board with authority to act for those reasons cited. *Id*. ¶¶ 11, 17; *see also Kennecott Copper Corp*., 1980-NMCA-007, ¶ 9, 94 N.M. 610, 613 ("The Board, therefore, although authorized to adopt regulations to assure that the standard will not be violated, was without authority to establish a regulation for the reasons stated in its Public Service Co. decision.").

Longstanding New Mexico precedent specifies that the Board's regulations cannot be more stringent than necessary to maintain the ambient air quality standard. *Pub. Serv. Co. of New Mexico*, 1976-NMCA-039, ¶ 19; *Kennecott Copper Corp.*, 1980-NMCA-007, ¶ 9. Proposed rules that are "more protective of public health and environment" do not provide a basis for the Board to promulgate rules that are more stringent than federal laws, regulations, or rules, or allow the Board to deviate from its statutory mandate. § 74-2-5(G). Simply put, the Board may only propose rules to regulate NOx and VOC emissions for controlling ozone concentrations in areas that exceed 95% of the NAAQS that are necessary, but no more stringent than necessary, to assure compliance with the ozone NAAQS.

V. The Board lacks authority to promulgate Section 125(G)

Under Section 74-2-12, civil enforcement authority is delegated to the Secretary of the Department. The Secretary may issue a compliance order or commence a civil action in district

court upon a determination that a person has violated or is violating the Air Act or a regulation promulgated pursuant thereto, and "may include a suspension or revocation of the permit or portion thereof issued by the secretary . . . that is alleged to have been violated." *See* NMSA 1978 § 74-2-12(A)(1) and (2) and (B). Under the proposed 20.2.50.125(G) NMAC, NMED proposes the following:

> Failure to comply with 20.2.50.125 NMAC: Notwithstanding the provisions of Section 20.2.50.125 NMAC, a source that meets the definition of a small business facility can be required to comply with the other Sections of 20.2.50 NMAC if the Secretary finds based on credible evidence that the source (1) presents an imminent and substantial endangerment to the public health or welfare or to the environment; (2) is not being operated or maintained in a manner that minimizes emissions of air contaminants; or (3) has violated any other requirement of 20.2.50.125 NMAC.

As mentioned in Section III (*supra*), the EIB's jurisdiction is statutorily defined and it is limited to the exercising the authority granted by statute. *See New Mexico Taxation & Revenue Dep't*, 2019-NMCA-054, ¶ 6; *Wilcox*, 2012-NMCA-106, ¶ 7 ("An administrative agency has no power to create a rule or regulation that is not in harmony with its statutory authority."). The Department's enforcement authority is independent of the Board's authority and derives directly from the Legislature. The EIB, consequently, does not have the authority to grant additional enforcement authority to the Department. In effect, the Board usurps the role of the Legislature by promulgating Section 125(G). Because the Board has no authority to promulgate this rule, it must reject proposed Section 125(G).

CONCLUSION

For the reasons stated herein, the Board should reject NMED's proposed plan and stay any further proceedings to adopt Part 50 until it adopts the necessary plan for addressing regulation of NOx and VOCs in areas in excess of 95% of the ozone NAAQS. If the Board decides to proceed,

it should accept IPANM's proposed final changes to Part 50 attached as **Exhibit A** and Statement of Reasons attached as **Exhibit B** and amend 20.2.50 NMAC accordingly.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on January 20, 2022, a copy of the foregoing ***Independent Petroleum Association of New Mexico Closing Arguments and Proposed Statement of Reasons*** was served via electronic mail on the following:

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IPANM'S FINAL PROPOSED CHANGES TO NMED PROPOSED 20.2.50 NMAC

IPANM's final proposed changes to NMED's September 16, 2021 proposed 20.2.50 NMAC [NMED Reb. Ex. 23] are shown with additions underlined and deletions indicated by strikethrough. All of IPANM's proposed changes are shown in red. Only those provisions for which IPANM is proposing changes are shown.

TITLE 20 ENVIRONMENTAL PROTECTION
CHAPTER 2 AIR QUALITY (STATEWIDE)
PART 50 OIL AND GAS SECTOR – OZONE PRECURSOR POLLUTANTS

20.2.50.2 SCOPE: This Part applies to sources located within areas of the state under the board's jurisdiction that, as of the effective date of this Part or anytime thereafter, are causing or contributing to ambient ozone concentrations based on data submitted by the department to EPA's Air Quality System that exceed ninety-five percent of the national ambient air quality standard for ozone, as measured by a design value calculated and based on data from one or more department monitors. As of the effective date, sources located in the following counties of the state are subject to this Part: ~~Chaves~~, Dona Ana, Eddy, Lea, ~~Rio Arriba,~~ Sandoval, San Juan, and Valencia.

A. If, at any time after the effective date of this Part, any counties or in area(s) of counties not previously specified ~~in the state is determined to be causing or contributing to ambient ozone concentrations that~~ exceed ninety-five percent of the national ambient air quality standard for ozone, as measured by a design value calculated by the U.S. Environmental Protection Agency based on data from one or more department monitors, the department shall petition the Board to amend this Part to incorporate such areas.

(1) The notice of proposed rulemaking shall be published no less than one-hundred and eighty (180) days before sources in the affected areas will become subject to this Part, and shall include, in addition to the requirements of the Board's rulemaking procedures at 20.1.1.301 NMAC:

(a) a list of the areas that the department proposed to incorporate into this Part, and the date upon which the sources in those areas will become subject to this Part; and

(b) proposed implementation dates, consistent with the time provided in the phased implementation schedules provided for throughout this Part, for sources within the areas subject to the proposed rulemaking to come into compliance with the provisions of this Part.

(2) In any rulemaking pursuant to this Section, the Board shall be limited to consideration of only those proposed changes necessary to incorporate other areas of the state into this Part.

B. Once a source becomes subject to this Part based upon its potential to emit, all requirements of this Part that apply to the source are ~~irrevocably~~ effective unless the source obtains a federally enforceable limit on the potential to emit that is below the applicability thresholds established in this Part, ~~or~~ the relevant section contains a threshold below which the requirements no longer apply.

20.2.50.7 DEFINITIONS: In addition to the terms defined in 20.2.2 NMAC - Definitions, as used in this Part, the following definitions apply.

A. "Approved instrument monitoring method" means an optical gas imaging, United States environmental protection agency (U.S. EPA) reference method 21 (RM 21) (40 CFR 60, Appendix B), or other instrument-based monitoring method or program approved by the department in advance and in accordance with 20.2.50 NMAC.

B. "Auto-igniter" means a device that automatically attempts to relight the pilot flame of a control device in order to combust VOC emissions, or a device that will automatically attempt to combust the VOC emission stream.

C. "Bleed rate" means the rate in standard cubic feet per hour at which gas is continuously vented from a pneumatic controller.

D. "Calendar year" means a year beginning January 1 and ending December 31.

E. "Centrifugal compressor" means a machine used for raising the pressure of natural gas by drawing in low-pressure natural gas and discharging significantly higher-pressure natural gas by means of a mechanical rotating vane or impeller. A screw, sliding vane, and liquid ring compressor is not a centrifugal compressor.

F. "Closed vent system" means a system that is designed, operated, and maintained to route the VOC emissions from a source or process to a process stream or control device with no loss of VOC emissions to the atmosphere.

G. "Commencement of operation" means for an oil and natural gas well site, the date any permanent production equipment is in use and product is consistently flowing to a sales line, gathering line or storage vessel from the first producing well at the stationary source, but no later than the end of well completion operation.

H. "Component" means a pump seal, flange, pressure relief device (including thief hatch or other opening on a storage vessel), connector or valve that contains or contacts a process stream with hydrocarbons, except for components where process streams consist solely of glycol, amine, produced water, or methanol.

I. "Connector" means flanged, screwed, or other joined fittings used to connect pipeline segments, tubing, pipe components (such as elbows, reducers, "T's" or valves) to each other; or a pipeline to a piece of equipment; or an instrument to a pipe, tube, or piece of equipment. A common connector is a flange. Joined fittings welded completely around the circumference of the interface are not considered connectors for the purpose of this Part.

J. "Construction" means fabrication, erection, or installation of a stationary source, including but not limited to temporary installations and portable stationary sources, but does not include relocations or like-kind replacements of existing equipment.

K. "Control device" means air pollution control equipment or emission reduction technologies that thermally combust, chemically convert, or otherwise destroy or recover air contaminants. Examples of control devices include but are not limited to open flares, enclosed combustion devices (ECDs), thermal oxidizers (TOs), vapor recovery units (VRUs), fuel cells, condensers, catalytic converters (oxidative, selective, and non-selective), or other emission reduction equipment. A control device may also include any other air pollution control equipment or emission reduction technologies approved by the department to comply with emission standards in this Part.

L. "Department" means the New Mexico environment department.

M. "Design value" means the 3-year average of the annual fourth-highest daily maximum 8-hour average ozone concentration.

N. "Downtime" means the period of time when equipment is not in operation.

O. "Enclosed combustion device" means a combustion device where waste gas is combusted in an enclosed chamber solely for the purpose of destruction. This may include, but is not limited to, an enclosed flare or combustor.

P. "Existing" means constructed or reconstructed before the effective date of this Part and has not since been modified or reconstructed.

Q. "Gathering and boosting station" means a facility, including all equipment and compressors, located downstream of a well site that collects or moves natural gas prior to the inlet of a natural gas processing plant; or prior to a natural gas transmission pipeline or transmission compressor station if no gas processing is performed; or collects, moves, or stabilizes crude oil or condensate prior to an oil transmission pipeline or other form of transportation. Gathering and boosting stations may include equipment for liquids separation, natural gas dehydration, and tanks for the storage of water and hydrocarbon liquids.

R. "Glycol dehydrator" means a device in which a liquid glycol absorbent, including ethylene glycol, diethylene glycol, or triethylene glycol, directly contacts a natural gas stream and absorbs water.

S. "Hydrocarbon liquid" means any naturally occurring, unrefined petroleum liquid and can include oil, condensate, and intermediate hydrocarbons. Hydrocarbon liquid does not include produced water.

T. "Liquid unloading" means the removal of accumulated liquid from the wellbore that reduces or stops natural gas production.

U. "Liquid transfer" means the unloading of a hydrocarbon liquid from a storage vessel to a tanker truck or tanker rail car for transport.

V. "Local distribution company custody transfer station" means a metering station where the local distribution (LDC) company receives a natural gas supply from an upstream supplier, which may be an interstate transmission pipeline or a local natural gas producer, for delivery to customers through the LDC's intrastate transmission or distribution lines.

W. "Natural gas-fired heater" means an enclosed device using a controlled flame and with a primary purpose to transfer heat directly to a process material or to a heat transfer material for use in a process.

X. "Natural gas processing plant" means the processing equipment engaged in the extraction of natural gas liquid from natural gas or fractionation of mixed natural gas liquid to a natural gas product, or both. A Joule-Thompson valve, a dew point depression valve, or an isolated or standalone Joule-Thompson skid is not a natural gas processing plant.

Y. "New" means constructed or reconstructed on or after the effective date of this Part.

Z. **"Non-Emitting Controller"** means a device that monitors a process parameter such as liquid level, pressure, or temperature and sends a signal to a control valve in order to control the process parameter and does not emit natural gas to the atmosphere. Examples of non-emitting controllers include but are not limited to instrument air or inert gas pneumatic controllers, electric controllers, mechanical controllers and Routed Pneumatic Controllers.

AA. **"Operator"** means the person or persons responsible for the overall operation of a stationary source.

BB. **"Optical gas imaging (OGI)"** means an imaging technology that utilizes a high-sensitivity infrared camera designed for and capable of detecting hydrocarbons.

CC. **"Owner"** means the person or persons who own a stationary source or part of a stationary source.

XX. **"Ozone precursor"** means nitrogen oxides (NOx) or volatile organic compounds (VOC)

DD. **"Permanent pit or pond"** means a pit or pond used for collection, retention, or storage of produced water or brine and is installed for longer than one year.

EE. **"Pneumatic controller"** means a device that monitors a process parameter such as liquid level, pressure, or temperature and uses pressurized gas (which may be released to the atmosphere during normal operation) and sends a signal to a control valve in order to control the process parameter. Controllers that do not utilize pressurized gas are not pneumatic controllers.

(1) "High-Bleed Pneumatic Controller" means a continuous bleed pneumatic controller that is designed to have a continuous bleed rate that emits in excess of 6 standard cubic feet per hour (scfh) of natural gas to the atmosphere.

(2) "Low-Bleed Pneumatic controller" means a continuous bleed pneumatic controller that is designed to have a continuous bleed rate that emits less than or equal to 6 scfh of natural gas to the atmosphere.

(3) "Intermittent pneumatic controller" means a pneumatic controller that is not designed to have a continuous bleed rate but is designed to only release natural gas above de minimis amounts to the atmosphere as part of the actuation cycle.

(4) "Routed Pneumatic Controller" means a pneumatic controller of any type that releases natural gas to a process, sales line, or to a combustion device instead of directly to the atmosphere.

FF. **"Pneumatic diaphragm pump"** means a positive displacement pump powered by pressurized gas that uses the reciprocating action of flexible diaphragms in conjunction with check valves to pump a fluid. A pump in which a fluid is displaced by a piston driven by a diaphragm is not considered a diaphragm pump. A lean glycol circulation pump that relies on energy exchange with the rich glycol from the contactor is not considered a diaphragm pump.

XX. **"Portable stationary source"** means a source that can be relocated to another operating site with limited dismantling and reassembly.

GG. **"Potential to emit (PTE)"** means the maximum capacity of a stationary source to emit any air pollutant under its physical and operational design. Any physical or operational limitation on the capacity of a source to emit an air pollutant, including air pollution control equipment and restrictions on the hours of operation or on the type or amount of material combusted, stored or processed, shall be treated as part of its design if the limitation is federally enforceable. The PTE for nitrogen dioxide shall be based on total oxides of nitrogen.

HH. **"Produced water"** means a liquid that is an incidental byproduct from well completion and the production of oil and gas.

II. **"Produced water management unit"** means a recycling facility or a permanent pit or pond that is a natural topographical depression, man-made excavation, or diked area formed primarily of earthen materials (although it may be lined with man-made materials), which is designed to accumulate produced water and has a design storage capacity equal to or greater than 50,000 barrels.

JJ. **"Qualified Professional Engineer"** means an individual who is licensed by a state as a professional engineer to practice one or more disciplines of engineering and who is qualified by education, technical knowledge, and experience to make the specific technical certifications required under this Part.

KK. **"Reciprocating compressor"** means a piece of equipment that increases the pressure of process gas by positive displacement, employing linear movement of a piston rod.

LL. **"Reconstruction"** means a modification that results in the replacement of the components or addition of integrally related equipment to an existing source, to such an extent that the fixed capital cost of the new components or equipment exceeds fifty percent of the fixed capital cost that would be required to construct a comparable entirely new facility.

MM. **"Recycling facility"** means a stationary or portable facility used exclusively for the treatment, re-use, or recycling of produced water and does not include oilfield equipment such as separators, heater treaters, and scrubbers in which produced water may be used.

NN. **"Responsible official"** means one of the following:

(1) for a corporation: president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy or decision-making functions for the corporation, or a duly authorized representative.

(2) for a partnership or sole proprietorship: a general partner or the proprietor, respectively.

OO. **"Small business ~~facility~~"** means, for the purposes of this Part, ~~a source that is independently owned or operated by~~ a company that is a not a subsidiary or a division of another business and, that employs no more than 50 ~~10~~ employees at any time during the calendar year~~, and that has a gross annual revenue of less than $250,000~~. Employees include part-time, temporary, contract, or limited service workers.

PP. **"Startup"** means the setting into operation of air pollution control equipment or process equipment.

QQ. **"Stationary Source"** or **"source"** means any building, structure, equipment, facility, installation (including temporary installations), operation, process, or portable stationary source that emits or may emit any air contaminant. ~~Portable stationary source means a source that can be relocated to another operating site with limited dismantling and reassembly.~~

RR. **"Storage vessel"** means a single tank or other vessel that is designed to contain an accumulation of hydrocarbon liquid or produced water and is constructed primarily of non-earthen material including wood, concrete, steel, fiberglass, or plastic, which provide structural support. A well completion vessel that receives recovered liquid from a well after commencement of operation for a period that exceeds 60 days is considered a storage vessel. A storage vessel does not include a vessel that is skid-mounted or permanently attached to a mobile source and located at the site for less than 180 consecutive days, such as a truck or railcar, a process vessel such as a surge control vessel, bottom receiver, or knockout vessel, or pressure vessel designed to operate in excess of 204.9 kilopascals (29.72 psi) without emissions to the atmosphere.

SS. **"Transmission Compressor Station"** means a facility, including all equipment and compressors, that moves pipeline quality natural gas at increased pressure from a well site or natural gas processing plant through a transmission pipeline for ultimate delivery to the local distribution company custody transfer station, underground storage, or to other industrial end users. Transmission compressor stations may include equipment for liquids separation, natural gas dehydration, and tanks for the storage of water and hydrocarbon liquids.

TT. **"Well workover"** means the repair or stimulation of an existing production well for the purpose of restoring, prolonging, or enhancing the production of hydrocarbons.

UU. **"Well site"** means the equipment directly associated with one or more oil wells or natural gas wells upstream of the natural gas processing plant. A well site may include equipment used for extraction, collection, routing, storage, separation, treating, dehydration, artificial lift, combustion, compression, pumping, metering, monitoring, and product piping.

20.2.50.112 GENERAL PROVISIONS:

A. General requirements:

(1) Sources subject to emissions standards and requirements under this Part shall be operated and maintained consistent with manufacturer specifications, or good engineering and maintenance practices. When used in this Part, the term manufacturer specifications means either the original equipment manufacturer (or successor) emissions related design specifications, maintenance practices and schedules, or an alternative set of specifications, maintenance practices and schedules sufficient to operate and maintain such sources in good working order, which have been approved by qualified maintenance personnel based on engineering principles and field experience. The owner or operator shall keep manufacturer specifications on file when available, as well as any alternative specifications that are being followed, and make them available upon request by the department. The terms of 20.2.50.112.A(1) apply any time reference to manufacturer specifications occurs in this Part.

(2) Sources, including associated air pollution control equipment and monitoring equipment, subject to emission standards or requirements under this Part shall at all times, including periods of startup, shutdown, and malfunction, be operated and maintained in a manner consistent with safety and good air pollution control practices for minimizing emissions of VOC and NOx. During a period of startup, shutdown, or malfunction, this general duty to minimize emissions requires that the owner or operator reduce emissions from the affected source to the greatest extent which is consistent with safety and good air pollution control practices. The general duty to minimize emissions does not require the owner or operator to make any further efforts to reduce emissions if

levels required by the applicable standard have been achieved. The terms of 20.2.50.112.A(2) apply any time reference to minimizing emissions occurs in this Part.

~~**(3)** Within two years of the effective date of this Part, owners and operators of a source requiring equipment monitoring, testing, or inspection shall develop and implement a database system capable of storing information for each source in a manner consistent with this section. The owner or operator shall maintain information regarding each source requiring equipment monitoring, testing, or inspection in a database system, including at a minimum, the following information:~~

~~**(a)** unique identification number;~~

~~**(b)** location (latitude and longitude) of the source;~~

~~**(c)** type of source (e.g., tank, VRU, dehydrator, pneumatic controller, etc.);~~

~~**(d)** for each source, the controlled VOC (and NO_x, if applicable) emissions in lbs./hr. and tpy;~~

~~**(e)** for a control device, the controlled VOC and NO_x emissions in lbs./hr. and tpy;~~

~~**(f)** make, model, and serial number; and~~

~~**(g)** a link to the manufacturer maintenance schedule or repair recommendations, or company-specific operational and maintenance practices.~~

~~**(4)** The database system(s) shall be maintained by the owner or operator of the facility.~~

~~**(5)** The owner or operator shall manage the source's record of data in the database system(s). The owner or operator shall generate a Compliance Database Report (CDR) from the information in the database system. The CDR is an electronic report maintained by the owner or operator and that can be submitted to the department upon request.~~

~~**(6)** The CDR is a report distinct from the owner or operator's database system(s). The department does not require access to the owner or operator's database system(s), only the CDR.~~

~~**(7)** The owner or operator's authorized representative must be able to access and input data in the database system(s) record for that source. That access is not required to be at any time from any location.~~

~~**(8)** The owner or operator shall contemporaneously track each monitoring event, and shall comply with the following:~~

~~**(a)** data gathered during each monitoring or testing event shall be contemporaneously uploaded into the database as soon as practicable, but no later than three business days of each compliance event, and when the final reports are received;~~

~~**(b)** certain sections of this Part require a date and time stamp, including a GPS display of the location, for certain monitoring events. By January 1, 2023, the department shall finalize a list of approved technologies to comply with this requirement and shall post the approved list on its website. Owners and operators shall comply with this requirement using an approved technology by April 1, 2023. Prior to April 1, 2023, owners and operators may comply with this requirement by making a written or electronic record of the date and time of any affected monitoring event; and~~

~~**(c)** data required by this Part shall be maintained in the database system(s) for at least five years.~~

~~**(9)** The department may request that an owner or operator retain a third party at their own expense to verify any data or information collected, reported, or recorded pursuant to this Part, and make recommendations to correct or improve the collection of data or information. Such requests may be made no more than once per year. The owner or operator shall submit a report of the verification and any recommendations made by the third party to the department by a date specified and implement the recommendations in the manner approved by the department. The owner or operator may request a hearing on whether good cause was demonstrated or whether the recommendations approved by the department must be implemented.~~

~~**(10)**~~**(3)** Where Part 50 refers to applicable federal standards or requirements, the references refer to the applicable federal standards or requirements that were in effect at the time of the effective date of this Part.

~~**(11)**~~**(4)** Prior to modifying an existing source, including but not limited to increasing a source's throughput or emissions, the owner or operator shall determine the applicability of this Part in accordance with 20.2.50.111(B) NMAC.

B. Monitoring requirements:

(1) Unless otherwise specified, the term monitoring as used in this Part includes, but is not limited to, monitoring, testing, or inspection requirements.

(2) Sources subject to emission standards and monitoring requirements under this Part shall be inspected monthly to ensure proper maintenance and operation, unless a different schedule is specified in the

Section applicable to that source type. If the equipment is shut down at the time of required periodic testing, monitoring, or inspection, the owner or operator shall not be required to restart the unit for the sole purpose of performing the testing, monitoring, or inspection, but shall note the shut down in the records kept for that equipment for that monitoring event.

(3) An owner or operator may submit for the department's review and approval an equally effective, enforceable, and equivalent alternative monitoring strategy under 20.2.50.116 NMAC. Such requests shall be made on an application form provided by the department. The department shall issue a letter approving or denying the requested alternative monitoring strategy. An owner or operator shall comply with the default monitoring requirements required under 20.2.50.116 NMAC and shall not operate under an alternative monitoring strategy until it has been approved by the department.

(4) For each monitoring event, the owner, operator, or authorized representative shall monitor as required by the applicable sections of this Part.

C. Recordkeeping requirements:

(1) Within three business days of a monitoring event and when final reports are received, an electronic record shall be made of the monitoring event and shall include the information required by the applicable sections of this Part.

(2) The owner or operator shall keep an electronic record required by this Part for five years.

(3) By March 1 of each calendar year, the owner or operator shall conduct a compliance evaluation and prepare an electronic record certifying the compliance status of each source subject to this Part with all terms, conditions, and applicable requirements of this Part. The compliance evaluation and certification shall include all sources subject to this Part for the previous calendar year.

~~**D. Reporting requirements:** Within three business days of a request by the department, the owner or operator shall for each source subject to the request, provide the requested information by electronically submitting a CDR to the department's Secure Extranet Portal (SEP), or by other means and formats specified by the department in its request. If the department requests a CDR from multiple facilities, additional time may be given as appropriate.~~

20.2.50.117 NATURAL GAS WELL LIQUID UNLOADING:

A. Applicability: Manual liquid unloading operations resulting in the venting of natural gas at natural gas wells are subject to the requirements of 20.2.50.117 NMAC. Manual Liquid unloading operations that do not result in the venting of any natural gas are not subject to this Part. Owners and operators of a natural gas well subject to this Part must comply with the standards set forth in Paragraph (3) of Subsection B of 20.2.50.117 NMAC within two years of the effective date of this Part.

B. Emission standards:

(1) The owner or operator of a natural gas well shall use best management practices during the life of the well to avoid the need for venting of natural gas associated with manual liquid unloading.

(2) The owner or operator of a natural gas well shall use the following best management practices during venting associated with liquid unloading to minimize emissions, consistent with well site conditions and good engineering practices:

(a) reduce wellhead pressure before blowdown or venting to atmosphere;

(b) monitor manual venting associated with manual liquid unloading in close proximity to the well or via remote telemetry; and

(c) close vents to the atmosphere and return the well to normal production operation as soon as practicable.

(3) The owner or operator of a natural gas well shall employ methodologies to reduce emissions during venting associated with a manual liquid unloading event:

(a) use of a plunger lift;

(b) use of artificial lift;

~~**(c)** use of a control device;~~

(d) use of an automated control system; or

(e) other practices ~~control~~ if approved by the department.

C. Monitoring requirements:

(1) The owner or operator shall monitor the following parameters during venting associated with manual liquid unloading:

(a) wellhead pressure;

(b) flow rate of the vented natural gas (to the extent feasible); and

(c) duration of venting to the storage vessel, tank battery, or atmosphere.

(2) The owner or operator shall calculate the volume and mass of VOC emitted during a venting event associated with a manual liquid unloading event.

~~**(3)** The owner or operator shall comply with the monitoring requirements of 20.2.50.112 NMAC.~~

D. Recordkeeping requirements:

(1) The owner or operator shall keep the following records for manual liquid unloading:

(a) unique identification number and location (latitude and longitude) of the well;

(b) date of the manual unloading event;

(c) wellhead pressure;

(d) flow rate of the vented natural gas (to the extent feasible. If not feasible, the owner or operator shall use the maximum potential flow rate in the emission calculation);

(e) duration of venting to the storage vessel, tank battery, or atmosphere;

(f) a description of the management practice used to minimize venting of VOC emissions before and during the manual liquid unloading;

~~**(g)** the type of control device or control technique used to control VOC emissions during venting associated with the liquid unloading event;~~ and

(h) a calculation of the VOC emissions ~~vented~~ emitted during a manual liquid unloading event based on the duration, calculated volume, and composition of the produced gas.

~~**(2)** The owner or operator shall comply with the recordkeeping requirements in 20.2.50.112 NMAC.~~

E. Reporting requirements: The owner or operator shall comply with the reporting requirements in 20.2.50.112 NMAC.

20.2.50.122 PNEUMATIC CONTROLLERS AND PUMPS:

A. Applicability: Natural gas-driven pneumatic controllers and diaphragm pumps permanently located at well sites, tank batteries, gathering and boosting stations, and natural gas processing plants, and transmission compressor stations are subject to the requirements of 20.2.50.122 NMAC, except pumps that operate less than 90 days per calendar year.

B. Emission standards:

(1) A new ~~natural gas-driven pneumatic controller or pump~~ well production facility, tank battery, gathering and boosting site, or natural gas processing plant shall comply with the requirements of 20.2.50.122 NMAC upon startup, except pumps that operate less than 90 days per calendar year.

(2) ~~An existing natural gas-driven pneumatic pump shall comply with the requirements of 20.2.50.122 NMAC within three years of the effective date of this Part~~. A new well production facility, tank battery, gathering and boosting site, or natural gas processing plant shall have non-emitting controllers installed, except as allowed in Paragraph 4 of Subsection E of 20.2.50.122 NMAC

(3) An existing well production facility and tank battery with four or more natural gas-driven pneumatic controllers shall comply with the requirements of 20.2.50.122 NMAC according to the ~~following~~ schedule in Table 1 below:

Table 1 – WELL SITES, TANK BATTERIES, GATHERING AND BOOSTING STATIONS

Total Historic ~~Percentage of~~ Non-Emitting ~~Controllers~~ Facility Percent Production	Total Required ~~Percentage of~~ Non-Emitting ~~Controllers~~ Facility Percent Production by January 1, 2024	Total Required ~~Percentage of~~ Non-Emitting ~~Controllers~~ Facility Percent Production by January 1, 2027	Total Required ~~Percentage of~~ Non-Emitting ~~Controllers~~ Facility Percent Production by January 1, 2030
> 75%	80%	85%	90%
> 60-75%	80%	85%	90%
> 40-60%	65%	70%	80%
> 20-40%	45%	70%	80%
0-20%	25%	65%	80%

Table 2 – TRANSMISSION COMPRESSOR STATIONS AND GAS PROCESSING PLANTS

Total Historic Percentage of Non-Emitting Controllers	Total Required Percentage of Non-Emitting Controllers by January 1, 2024	Total Required Percentage of Non-Emitting Controllers by January 1, 2027	Total Required Percentage of Non-Emitting Controllers by January 1, 2030
> 75%	80%	95%	98%
> 60-75%	80%	95%	98%
> 40-60%	65%	95%	98%
> 20-40%	50%	95%	98%
0-20%	35%	95%	98%

(a) For purposes of this section, a "Non-Emitting Facility" means a facility with only Non-Emitting Controller except as allowed under Paragraph (5) of Subsection B of 20.2.50.122 NMAC.

(b) Except as provided in 20.2.50.122.B.(3)(c) or (d) NMAC, owners or operators of existing well production facilities and associated tank batteries shall by January 1, 2023:

(i) Determine the Historic Facility Production for each existing well production facility by summing the total liquids productions (summing total barrels of oil and water produced through the well production facility) for the calendar year 2020. For a well production facility that does not have a full calendar year of data, then the owner or operator may use 2021 data or an estimate of the anticipated yearly production for the facility based on industry accepted calculation methodologies.

(ii) Calculate the Total Historic Production for the owner or operator by summing the Historic Facility Production for all existing well production facilities that commenced construction prior to the effective date.

(iii) Calculate the Facility Percent Production for each existing facility by dividing the Historic Facility Production by the Total Historic Production.

(iv) Determine the Total Historic Non-Emitting Facility Percent Production by summing the Facility Percent Production for each Non-Emitting Facility as defined in Subparagraph (5)(a) of Subsection B of 20.2.50.122 NMAC. The Total Historic Non-Emitting Facility Percent Production determines an owner or operator's January 1, 2024, January 1, 2027 and January 1, 2030 Total Required Non-Emitting Facility Percent Production as set forth in Table 1, except as provided in subparagraphs (c) or (d) of this Paragraph (3).

(v) Owners and operators must demonstrate compliance with Table 1's January 1, 2024, January 1, 2027 and January 1, 2030 Total Required Non-Emitting Facility Percent Production through any combination of retrofitting well production facilities (and associated tank batteries) to use non-emitting controllers or plugging and abandoning an existing well production facility and emptying and decommissioning an associated tank battery. A tank battery that is decommissioned and moved to another location is a new facility for purposes of 20.2.50.122.B.(1) and (2) NMAC.

(c) In lieu of the demonstration required by 20.2.50.122.B.(3)(b) NMAC, an owner or operator may demonstrate that its total oil and natural gas production subject to Part 50 averages fifteen barrels of oil equivalent (using a 6 mcf to 1 barrel oil equivalent for natural gas) or less per well per day annual average. To calculate total oil and natural gas production subject to Part 50, an owner or operator must sum all affected oil and natural gas production in calendar year 2020 in barrels of oil equivalent, divide by 365, and divide by the number of affected wells producing hydrocarbons that the owner or operator operated in 2020.

(d) If an owner or operator meets at least seventy-five percent Total Non-Emitting Facility Percent Production by January 1, 2025, table 1 of Paragraph (3) of Subsection B of 20.2.50.122 NMAC does not apply and the owner or operator shall maintain the Total Non-Emitting Facility Percent Production at seventy-five percent or greater thereafter.

~~**(4)** Standards for natural gas-driven pneumatic controllers.~~

~~**(a)** new pneumatic controllers shall have an emission rate of zero.~~

~~**(b)** existing pneumatic controllers with access to commercial line electrical power shall have an emission rate of zero within two years of the effective date of this Part.~~

~~**(c)** existing pneumatic controllers shall meet the required percentage of non-emitting controllers within the deadlines in tables 1 and 2 of Paragraph (3) of Subsection B of 20.2.50.122 NMAC, and shall comply with the following:~~

~~**(i)** by January 1, 2023, the owner or operator shall determine the total controller count for all controllers at all of the owner or operator's affected facilities that commenced construction before the effective date of this Part. The total controller count must include all emitting pneumatic controllers and all non-emitting pneumatic controllers, except that pneumatic controllers necessary for a safety or process purpose~~

~~that cannot otherwise be met without emitting natural gas shall not be included in the total controller count.~~

~~**(ii)** determine which controllers in the total controller count are non-emitting and sum the total number of non-emitting controllers and designate those as total historic non-emitting controllers.~~

~~**(iii)** determine the total historic non-emitting percent of controllers by dividing the total historic non-emitting controller count by the total controller count and multiplying by 100.~~

~~**(iv)** based on the percent calculated in (iii) above, the owner or operator shall determine which provisions of tables 1 and 2 of Paragraph (3) of Subsection B of 20.2.50.122 NMAC apply and the replacement schedule the owner or operator must meet.~~

~~**(v)** if an owner or operator meets at least seventy-five percent total non-emitting controllers by January 1, 2025, the owner or operator is not subject to the requirements of tables 1 and 2 of Paragraph (3) of Subsection B of 20.2.50.122 NMAC.~~

(vi) if ~~after January 1, 2027~~, an owner or operator's remaining pneumatic controllers are not cost-effective to retrofit, the owner or operator may submit a cost analysis of retrofitting those remaining units to the department. The department shall review the cost analysis and determine whether those units qualify for a waiver from meeting additional retrofit requirements.

(d) a pneumatic controller with a bleed rate greater than six standard cubic feet per hour is permitted when the owner or operator has demonstrated that a higher bleed rate is required based on functional needs, including response time, safety, and positive actuation. An owner or operator that seeks to maintain operation of an emitting pneumatic controller must prepare and document the justification for the safety or process purposes prior to the installation of a new emitting controller or the retrofit of an existing controller. The justification shall be certified by a qualified professional or inhouse engineer.

(e) Temporary pneumatic controllers that emit natural gas and are used for well abandonment activities or used prior to or through the end of flowback, and pneumatic controllers used as emergency shutdown devices located at a well site, are not subject to the requirements of Subsection B of 20.2.50.122 NMAC.

(f) Temporary or portable pneumatic controllers that emit natural gas and are on-site for less than 90 days are not subject to the requirements of Subsection B of 20.2.50.122 NMAC.

(5) Standards for natural gas-driven pneumatic diaphragm pumps.

(a) new pneumatic diaphragm pumps located at natural gas processing plants shall have ~~a~~n designated natural gas emission rate of zero.

(b) new pneumatic diaphragm pumps located at well sites, tank batteries, gathering and boosting stations, or transmission compressor stations with access to commercial line electrical power shall have a~~n~~ designated natural gas emission rate of zero.

(c) existing pneumatic diaphragm pumps located at well sites, tank batteries, gathering and boosting stations, natural gas processing plants, or transmission compressor stations with access to commercial line electrical power shall have a~~n~~ designated natural gas emission rate of zero within ~~two~~ three years of the effective date of this Part.

(d) owners and operators of pneumatic diaphragm pumps located at well sites, tank batteries, gathering and boosting stations, or transmission compressor stations without access to commercial line electrical power shall reduce VOC emissions from the pneumatic diaphragm pumps by ninety-five percent if it is technically feasible to route emissions to a control device, fuel cell, or process. If there is a control device available onsite but it is unable to achieve a ninety-five percent emission reduction, and it is not technically feasible to route the pneumatic diaphragm pump emissions to a fuel cell or process, the owner or operator shall route the pneumatic diaphragm pump emissions to the control device within ~~two~~ three years of the effective date of this Part.

(e) If an owner or operator's remaining natural gas pneumatic controllers, or if three years after the effective date, an owner's or operator's existing natural gas pneumatic diaphragm pumps at a site without commercial line power, are not cost-effective to retrofit, the owner or operator shall submit a cost analysis of retrofitting those remaining units to the department. The department shall review the cost analysis and determine whether those units qualify for a waiver from meeting additional retrofit requirements.

C. Monitoring requirements:

(1) Pneumatic controllers or diaphragm pumps not using natural gas or other hydrocarbon gas as a motive force are not subject to the monitoring requirements in Subsection C of 20.2.50.122 NMAC.

(2) The owner or operator of a facility with one or more natural gas-driven pneumatic controllers subject to the deadlines set forth in tables 1 and 2 of Paragraph (3) of Subsection B of 20.2.50.122 NMAC shall monitor the compliance status of each subject pneumatic controller at each facility.

(3) The owner or operator of a natural gas-driven pneumatic controller shall, on a monthly basis, conduct an AVO or OGI inspection, and shall also inspect the pneumatic controller, perform necessary maintenance ~~(such as cleaning, tuning, and repairing a leaking gasket, tubing fitting and seal; tuning to operate over a broader range of proportional band; eliminating an unnecessary valve positioner), and maintain~~ on the natural gas-driven pneumatic controller according to manufacturer specifications to ensure that the VOC emissions are minimized.

(4) ~~The owner or operator's database shall contain the following~~ For any natural gas-driven pneumatic controller remaining in operation after January 1, 2030, the owner or operator shall maintain an inventory of natural gas driven pneumatic controllers containing the following:

(a) natural gas-driven pneumatic controller unique identification number;

(b) type of controller (continuous or intermittent);

(c) if continuous, design continuous bleed rate in standard cubic feet per hour;

(d) if intermittent, bleed volume per intermittent bleed in standard cubic feet; and

(e) if continuous, design annual bleed rate in standard cubic feet per year.

(5) The owner or operator of a natural gas-driven pneumatic diaphragm pump that emits natural gas to the atmosphere shall, on a monthly basis, conduct an AVO or OGI inspection and shall also inspect the pneumatic pump and perform necessary maintenance, ~~and maintain the pneumatic pump according to manufacturer specifications~~ to ensure that the VOC emissions are minimized.

(6) The owner or operator of a natural gas-driven pneumatic controller shall comply with the requirements in Paragraph (3) of Subsection C or Subsection D of 20.2.50.116 NMAC. During instrument inspections, operators shall use RM 21, OGI, or alternative instruments used under Subsection D of 20.2.50.116 NMAC to verify that intermittent controllers are not emitting when not actuating. Any intermittent controller emitting when not actuating shall be repaired consistent with Subsection E of 20.2.50.116 NMAC.

(7) Prior to any monitoring event, the owner or operator shall date and time stamp the event, and the monitoring data entry shall be made in accordance with the requirements of this Part.

(8) The owner or operator shall monitor liquids production through each well production facility or tank battery.

(9) The owner or operator shall monitor total oil and gas production though each well production facility.

(6) The owner or operator shall comply with the monitoring requirements in 20.2.50.112 NMAC.

D. Recordkeeping requirements:

(1) Non-emitting pneumatic controllers and diaphragm pumps are not subject to the recordkeeping requirements in Subsection D of 20.2.50.122 NMAC.

(2) ~~The owner or operator shall maintain a record of the total controller count for all controllers at all of the owner's or operator's affected facilities that commenced operation before the effective date of this Part. The total controller count must include all emitting and non-emitting pneumatic controllers.~~ The owner or operator shall maintain a record of each existing well production facility and associated tank batter, its total liquids production, the total oil and gas production at all existing well production facilities subject to Part 50, whether the well production facility and associated tank battery is a Non-Emitting Facility, and the 2020 liquid throughput for each well production facility and associated tank battery. An owner or an operator complying with Table 1 of Paragraph (3) of Subsection B shall, beginning in calendar year 2022 each year through calendar year 2031, calculate its Non-Emitting Facility Percent Production as set forth in Paragraph (3)(b) of Subsection B except substituting the calendar year's production for the 2020 production. The owner or operator of existing well production facilities complying with the limitation on daily average production using the procedures in Paragraph (3)(c) of Subsection B shall calculate its daily average production using the procedures in Paragraph (3) substituting the calendar year 2020.

(3) The owner or operator shall maintain a record for each existing gathering and boosting site and natural gas processing plant of the total count ~~of natural gas-driven pneumatic controllers necessary for a safety or process purpose that cannot otherwise be met without emitting VOC~~ of all emitting and non-emitting pneumatic controllers. An owner or operator shall calculate the percentage of non-emitting controllers for each calendar year from 2022 through 2031, excluding controllers under Paragraph (5) or (7) of Subsection B of 20.2.50.122 NMAC.

(4) The owner or operator of a natural gas-driven pneumatic controller subject to the requirements in tables 1 and 2 of Paragraph (3) of Subsection B of 20.2.50.122 NMAC shall generate a schedule for meeting the compliance deadlines for each pneumatic controller. ~~The owner or operator shall keep a record of the~~

~~compliance status of each subject controller.~~

(5) The owner or operator shall maintain an electronic record for each natural gas-driven pneumatic controller. The record shall include the following:

(a) pneumatic controller unique identification number;

(b) time and date stamp, including GPS of the location, of any monitoring;

(c) name of the person(s) conducting the inspection;

(d) AVO or OGI inspection result;

~~**(e)** AVO or OGI level discrepancy in continuous or intermittent bleed rate;~~

(f) record of the controller type, bleed rate, or bleed volume required in Subparagraphs (b), (c), (d), and (e) of Paragraph (4) of Subsection C on 20.2.50.122 NMAC.

(g) maintenance date and maintenance activity; and

(h) a record of the justification and certification required in Subparagraph (d) of Paragraph (4) of Subsection B of 20.2.50.122 NMAC.

(6) The owner or operator of a natural gas-driven pneumatic controller with a bleed rate greater than six standard cubic feet per hour shall maintain a record documenting why a bleed rate greater than six scf/hr is necessary, as required in Subsection B of 20.2.50.122 NMAC.

(7) The owner or operator shall maintain a record for a natural gas-driven pneumatic pump with an emission rate greater than zero and the associated pump number at the facility. The record shall include:

(a) for a natural gas-driven pneumatic diaphragm pump in operation less than 90 days per calendar year, a record for each day of operation during the calendar year.

(b) a record of any control device designed to achieve at least ninety-five percent emission reduction, including an evaluation or manufacturer specifications indicating the percentage reduction the control device is designed to achieve.

(c) records of the engineering assessment and certification by a qualified professional or inhouse engineer that routing pneumatic pump emissions to a control device, fuel cell, or process is technically infeasible.

(8) The owner or operator shall comply with the recordkeeping requirements in 20.2.50.112 NMAC.

E. Reporting requirements: The owner or operator shall comply with the reporting requirements in 20.2.50.112 NMAC.

20.2.50.124 WELL WORKOVERS

A. Applicability: Workovers performed at oil and natural gas wells are subject to the requirements of 20.2.50.124 NMAC as of the effective date of this Part.

B. Emission standards: The owner or operator of an oil or natural gas well shall use the following best management practices during a workover to minimize emissions, consistent with the well site condition and good engineering or operational practices:

(1) reduce wellhead pressure before blowdown to minimize the volume of natural gas vented;

(2) monitor manual venting at the well until the venting is complete; and

(3) route natural gas to the sales line, if possible.

C. Monitoring requirements:

(1) The owner or operator shall monitor the following parameters during a workover:

(a) wellhead pressure;

(b) flow rate of the vented natural gas (to the extent feasible); and

(c) duration of venting to the atmosphere.

(2) The owner or operator shall calculate the estimated volume and mass of VOC vented during a workover.

(3) The owner or operator shall comply with the monitoring requirements in 20.2.50.112 NMAC.

D. Recordkeeping requirements:

(1) The owner or operator shall keep the following record for a workover:

(a) unique identification number and location (latitude and longitude) of the well;

(b) date the workover was performed;

(c) wellhead pressure;

(d) flow rate of the vented natural gas to the extent feasible, and if measurement of

the flow rate is not feasible, the owner or operator shall use the maximum potential flow rate in the emission calculation;

(e) duration of venting to the atmosphere;

(f) description of the best management practices used to minimize release of VOC emissions before and during the workover;

(g) calculation of the estimated VOC emissions vented during the workover based on the duration, volume, and gas composition; and

(h) the method of notification to the public and proof that notification was made to the affected public.

(2) The owner or operator shall comply with the recordkeeping requirements in 20.2.50.112 NMAC.

E. Reporting requirements

(1) The owner or operator shall comply with the reporting requirements in 20.2.50.112 NMAC.

~~**(2)** If it is not feasible to prevent VOC emissions from being emitted to the atmosphere from a workover event, the owner or operator shall notify by certified mail, or by other effective means of notice so long as the notification can be documented, all residents located within one-quarter mile of the well of the planned workover at least three calendar days before the workover event.~~

~~**(3)** If the workover is needed for routine or emergency downhole maintenance to restore production lost due to upsets or equipment malfunction, the owner or operator shall notify all residents located within one-quarter mile of the well of the planned workover at least 24 hours before the workover event.~~

[20.2.50.124 NMAC - N, XX/XX/2021]

20.2.50.125 SMALL BUSINESS FACILITIES

A. Applicability: Small business facilities as defined in this Part are subject to the requirements of 20.2.50.125 NMAC.

B. General requirements:

(1) The owner or operator shall ensure that all equipment is operated and maintained consistent with manufacturer specifications, and good engineering and maintenance practices. The owner or operator shall keep manufacturer specifications and maintenance practices on file and make them available to the department upon request.

(2) The owner or operator shall calculate the VOC and NO_x emissions from the facility on an annual basis. The calculation shall be based on the actual production or processing rates of the facility.

(3) The owner or operator shall maintain a database of company-wide VOC and NO_x emission calculations for all subject facilities and associated equipment and shall update the database annually.

(4) The owner or operator shall comply with Paragraph (9) of Subsection A of 20.2.50.112 NMAC if requested by the department.

C. Monitoring requirements: The owner or operator shall comply with the requirements in Subsections C or D of 20.2.50.116 NMAC.

D. Repair requirements: The owner or operator shall comply with the requirements of Subsection E of 20.2.50.116 NMAC.

E. Recordkeeping requirements: The owner or operator shall maintain the following electronic records for each facility:

(1) annual certification that the small business facility meets the definition in this Part;

(2) calculated annual VOC and NO_x emissions from each facility and the company-wide annual VOC and NO_x emissions for all subject facilities; and

(3) records as required under Subsection F of 20.2.50.116 NMAC.

F. Reporting requirements: The owner or operator shall submit to the department an initial small business certification within sixty days of the effective date of this Part, and by March 1 each calendar year thereafter. The certification shall be made on a form provided by the department. The owner or operator shall comply with the reporting requirements in 20.2.50.112 NMAC.

~~**G. Failure to comply with 20.2.50.125 NMAC:** Notwithstanding the provisions of Section 20.2.50.125 NMAC, a source that meets the definition of a small business facility can be required to comply with the other Sections of 20.2.50 NMAC if the Secretary finds based on credible evidence that the source (1) presents an imminent and substantial endangerment to the public health or welfare or to the environment; (2) is not being~~

~~operated or maintained in a manner that minimizes emissions of air contaminants; or (3) has violated any other requirement of 20.2.50.125 NMAC.~~

IPANM'S PROPOSED STATEMENT OF REASONS

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INTRODUCTION

1. This mater comes before the New Mexico Environmental Improvement Board ("EIB" or "the Board") upon a petition filed by the New Mexico Environment Department ("NMED" or "Department") proposing new regulations for Oil and Gas Sector – Ozone Precursor Pollutants to be codified at 20.2.50 NMAC.

2. NMED's petition for regulatory change was filed with the Board on May 6, 2021. On June 8, 2021, the Board issued an Order of Hearing Determination and Hearing Officer Appointment, designating Felicia Orth as Hearing Officer for the proceeding and establishing a hearing date of September 20, 2021. On August 26, 2021, the Hearing Officer issued the Procedural Order governing this proceeding.

3. Entries of appearance were filed by Conservation Voters New Mexico, Diné C.A.R.E., Earthworks, Natural Resources Defense Council, San Juan Citizens Alliance, Sierra Club, 350 New Mexico, 350 Santa Fe, Environmental Defense Fund, National Parks Conservation Association ("NPCA") (collectively "Clean Air Advocates"), New Mexico Oil and Gas Association ("NMOGA"), Oxy USA Inc. ("Oxy"), Commercial Disposal Group ("CDG"), Kinder Morgan, Inc. ("KM"), El Paso Natural Gas Company, LLC, TransColorado Gas Transmission Co., LLC, Natural Gas Pipeline Company of America, LLC, NGL Energy Partners LP, Solaris Water Midstream, LLC, OWL SWD Operating, LLC, Goodnight Midstream, LLC, Independent Petroleum Association of New Mexico ("IPANM"), New Mexico Environmental Law Center, Center for Civic Policy ("CCP"), NAVA Education Project ("NAVA") (collectively "CCP-NAVA"), The Gas Compressor Association ("GCA"), and the New Mexico Environment Department.

4. Pursuant to the Hearing Determination and the Procedural Order, the parties pre-filed written direct and rebuttal technical testimony on July 28, 2021 and September 7, 2021, respectively. Witness lists were filed on September 13, 2021.

5. Parties were given an additional opportunity to provide briefing on the legal issues regarding the provisions in proposed 20.2.50.127 NMAC (Prohibited Activity and Credible Evidence) by September 13, 2021.

6. The hearing began on September 20, 2021 and continued through October 1, 2021. The hearing was conducted virtually in light of the COVID-19 pandemic. The public was afforded ample opportunity to participate throughout the hearing.

LEGAL AUTHORITY

7. Under the New Mexico Air Quality Control Act ("Air Act"), the Board is responsible for the prevention or abatement of air pollution. NMSA 1978, § 74-2-5 (2021).

8. Under the AQCA, the Board has the authority to "adopt, promulgate, publish, amend and repeal rules and standards consistent with the [AQCA] and maintain national ambient air quality standards and prevent or abate air pollution." *Id.* The "standards" are the ambient air quality standards authorized by § 74-2-5(B)(1)(a).

9. In addition, in areas of the state where ambient concentrations of ozone are 95 % or more of the National Ambient Air Quality Standard ("NAAQS") for ozone, the Board is required to adopt a plan, including regulations of emissions of nitrogen oxides and volatile organic compounds (ozone precursors), to assure that the NAAQS for ozone are attained and maintained. Section 74-2-5.C. "Rules adopted pursuant to this subsection shall be limited to sources of emissions within the area of the state where the ozone concentrations exceed ninety-five percent of the primary national ambient air quality standard."

10. Before the Board or local board adopts a rule that is more stringent than the federal act or federal regulations, or that applies to sources not subject to regulation pursuant to the federal act or regulations, the Board or local board shall make a determination, based on substantial evidence and after notice and public hearing, that the proposed rule will be more protective of public health and the environment. NMSA 1978 § 74-2-5(G).

11. Under the Air Act, any person (including NMED) may at any time recommend or propose a regulation to the Board. NMSA 1978, § 74-2-6(A) (1992).

12. The Board's rulemaking procedures are governed by 20.1.1 NMAC.

13. A person wanting the Board to adopt, amend, or repeal any regulation or standard within the Board's jurisdiction must file a petition with the Board that states the proposed regulatory change and the reasons for the change. 20.1.1.300 NMAC.

14. To adopt a regulation or emission control requirement, the Board must hold a public hearing. § 74-2-6(B). At the hearing, the Board must allow interested persons the opportunity to submit data, views, or argument and permit the examination of witnesses who are testifying. § 74-2-6(D).

15. After the public hearing, the Board deliberates and issues a decision on the proposed rulemaking. 20.1.1.407 NMAC. The proposed rule becomes adopted and final upon signature of the written Board decision. *Id.*

DEVELOPMENT OF THE OIL AND GAS SECTOR – OZONE PRECURSOR RULE

16. The proposed Oil and Gas Sector – Ozone Precursor Rule ("the Ozone Rule") is part of two significant initiatives regarding the control of ozone in New Mexico. Petition for Regulatory Change, at 2, May 6, 2021. The first initiative is NMED's Ozone Attainment Initiative ("OAI"), which has a goal of maintaining New Mexico's compliance with the NAAQS for ozone. *Id.* The second initiative is pursuant to Executive Order 2019-003 from Governor Michelle Lujan Grisham directing NMED and the New Mexico Energy, Minerals, and Natural Resources Department ("EMNRD") to develop a regulatory framework to reduce oil and gas sector methane emission and prevent waste from new and existing sources. *Id.*

17. From June through August 2019, NMED and EMNRD jointly held public meetings throughout the State to: "provide information regarding the need for the regulatory initiatives and the relevant authorities for the regulatory actions; to hear input from stakeholders and members of the public; and to answer questions regarding the rulemaking process." *Id.* at 3.

18. A Methane Advisory Panel ("MAP") was convened by NMED and EMNRD in August 2019 to "move forward in a manner grounded in science, innovation, collaboration and compliance". **NMED Ex. 10** at 0005 (Methane Advisory Panel Technical Report). The members of the MAP were 27 individuals across environmental organizations, Nations, tribes, pueblos, small and large independent petroleum producers, and major, vertically integrated companies. ***Id.*** The MAP produced a technical report as a "New Mexico-specific treatise on methane emissions and potential reduction mechanisms." ***Id.***

19. On July 20, 2020, NMED released a preliminary draft ("Pre-Petition Draft") of the Ozone Rule. **NMED Ex. 12** (Pre-Petition Draft of 20.2.50 NMAC – July 20, 2020). Written comments were received on this draft during a two-month comment period. Petition for Regulatory Change, at 3, May 6, 2021. IPANM submitted written comments on the draft. From September 2020 through May 2021, NMED reviewed all the input received on the Ozone Rule and made substantial revisions based on that input. ***Id.***

20. NMED submitted the Petition for Regulatory Change ("the Petition") on May 6, 2021. The Petition included the newly revised version of the Ozone Rule. ***Id.*** at 8. The Petition included NMED's statement of reasons for the proposed rule.

21. At its June 2021 meeting, the Board granted the petition and decided to appoint a hearing officer to preside at the hearing.

22. On June 8, 2021, the Board issued an Order of Hearing Determination and Hearing Officer Appointment, designating Felicia Orth as Hearing Officer for the proceeding and establishing a hearing date of September 20, 2021. The Order required that any person intending to submit direct technical testimony must submit a notice of intent to present direct technical testimony, including full written testimony and exhibits by July 28, 2021. Any person intending to submit rebuttal technical testimony was required to submit a notice of intent, including full written testimony and exhibits by September 6, 2021.

23. On August 26, 2021, the Hearing Officer issued the Procedural Order governing this proceeding.

24. The Hearing Notice was published in the New Mexico Register on June 22, 2021. **NMED Ex. 114.** The Hearing Notice was also published on the New Mexico Sunshine Portal on June 22, 2021. **NMED Ex. 115**. The Hearing Notice was also published in the following newspapers: Albuquerque Journal, Carlsbad Current Argus, Farmington Daily Times, Hobbs Daily News Sun, and the Santa Fe New Mexican. **NMED Exs. 116-124.** Lastly, the Hearing Notice was sent to New Mexico tribes and the New Mexico Land Grant Council. **NMED Exs. 125-26.**

25. Oxy; NMOGA; IPANM; Commercial Disposal Group; Environmental Defense Fund; National Park Service; KM and its subsidiaries and affiliations, El Paso Natural Gas Company LLC, Transcolorado Gas Transmission Co., LLC, and Natural Gas Pipeline Company of America, LLC; GCA; New Mexico Environmental Law Center; Clean Air Advocates; WildEarth Guardians; CCP-NAVA; NMED; and Solar Turbines (collectively "the Parties") submitted notices of intent to present technical pre-filed written direct and/or rebuttal technical testimony.

26. A virtual public hearing was held from September 20, 2021 through October 1, 2021. The Hearing Officer heard technical testimony, including direct and cross examination from the Parties and Public comment was heard from many interested members of the public.

27. After the public hearing, in accordance with the Procedural Order, parties submitted closing arguments, proposed reasons, and final proposed changes to the Ozone Rule.

28. The Hearing Officer allowed all interested persons a reasonable opportunity to submit data, views, and arguments, and to examine witnesses.

PROPOSED STATEMENT OF REASONS

After deliberation, the Board hereby adopts the following Statement of Reasons in support of its decision:

I. General

29. Ozone is not directly emitted from sources, but rather is formed when nitrogen oxides ("NOx") and volatile organic compounds ("VOCs") react in the presence of sunlight. *NMED Petition*, Statement of Reasons at 5.

30. "As the amount of these compounds increase in the air during warm days and intense sunlight, the essential chemical reactions take place to form ozone." *Id.*

31. Anthropogenic and non-anthropogenic sources contribute to ozone concentrations. *Id.*

32. Under the Air Act, the Board must take action to control NOx and VOC emissions when "emissions from sources within its jurisdiction cause or contribute to ozone concentrations in excess of ninety-five present of the ozone NAAQS." *NMED Petition*, Statement of Reasons at 7; Section 74-2-5(C).

33. The Air Act requires the Board to "adopt a plan, including regulations, to control emissions of NOx and VOC to provide for attainment and maintenance of the ozone NAAQS for those areas that exceed the ninety-five percent of the standard." *Id.*

34. The Air Act does not specify the elements required for a plan to control NOx and VOC emissions.

35. The federal Clean Air Act specifies the requirements for state implementation plans ("SIP") for assuring that NAAQS, including ozone, are attained and maintained. The requirements include the following: enforceable emission limits, appropriate control equipment, collection of monitoring data, required emission report amongst many other steps. 42 U.S.C. § 7410(a)(2).

36. The federal Clean Air Act regulations regarding a SIP for implementation of the 2015 NAAQS for ozone management are contained in 40 C.F.R. Part 51, Subpart CC.

37. New Mexico has an approved SIP, including requirements for ozone. 40 C.F.R. Part 52, Subpart GG.

38. Section 172 of the federal Clean Air Act, which applies to requirements for areas designated as nonattainment with the NAAQS, requires that nonattainment area plans:

> (1) In general
>
> Such plan provisions shall provide for the implementation of all reasonably available control measures as expeditiously as practicable (including such reductions in emissions from existing sources in the area as may be obtained through the adoption, at a minimum, of reasonably available control technology) and shall provide for attainment of the national primary ambient air quality standards.
>
> (2) RFP
>
> Such plan provisions shall require reasonable further progress.
>
> (3) Inventory
>
> Such plan provisions shall include a comprehensive, accurate, current inventory of actual emissions from all sources of the relevant pollutant or pollutants in such area,

including such periodic revisions as the Administrator may determine necessary to assure that the requirements of this part are met.

(4) Identification and quantification

Such plan provisions shall expressly identify and quantify the emissions, if any, of any such pollutant or pollutants which will be allowed, in accordance with section 7503(a)(1)(B) of this title, from the construction and operation of major new or modified stationary sources in each such area. The plan shall demonstrate to the satisfaction of the Administrator that the emissions quantified for this purpose will be consistent with the achievement of reasonable further progress and will not interfere with attainment of the applicable national ambient air quality standard by the applicable attainment date.

(5) Permits for new and modified major stationary sources

Such plan provisions shall require permits for the construction and operation of new or modified major stationary sources anywhere in the nonattainment area, in accordance with section 7503 of this title.

(6) Other measures

Such plan provisions shall include enforceable emission limitations, and such other control measures, means or techniques (including economic incentives such as fees, marketable permits, and auctions of emission rights), as well as schedules and timetables for compliance, as may be necessary or appropriate to provide for attainment of such standard in such area by the applicable attainment date specified in this part.

(7) Compliance with section 7410(a)(2)

Such plan provisions shall also meet the applicable provisions of section 7410(a)(2) of this title.

(8) Equivalent techniques

Upon application by any State, the Administrator may allow the use of equivalent modeling, emission inventory, and planning procedures, unless the Administrator determines that the proposed techniques are, in the aggregate, less effective than the methods specified by the Administrator.

(9) Contingency measures

Such plan shall provide for the implementation of specific measures to be undertaken if the area fails to make reasonable further progress, or to attain the national primary ambient air quality standard by the attainment date applicable under this part. Such measures shall be included in the plan revision as contingency measures to take effect in any such case without further action by the State or the Administrator.

42 U.S.C. § 7502(c) (1990) (emphasis added).

39. The Board finds that the Ozone Advance Path Forward document (**NMED Ex. 4**) is not sufficient under Section 74-2-5(C) because it lacks the requisite level of detail and support required for an attainment or nonattainment SIP under the federal Clean Air Act.

II. 20.2.50.2 Scope

A. Areas Subject to Part 50

40. NMED proposed to implement Part 50 in the following counties of the state are subject to this Part: Chaves, Dona Ana, Eddy, Lea, Rio Arriba, Sandoval, San Juan, and Valencia.

41. NMED stated that Chaves and Rio Arriba counties were included because sources in those counties may cause or contribute to ozone concentrations in excess of 95 % of the ozone NAAQS in other counties. Tr. Vol. 1, 298:10-19 (Baca).

42. The Air Act, Section 74-2-5(C), limits the Board's authority to sources "sources of emissions within the area of the state where the ozone concentrations exceed ninety-five percent of the primary national ambient air quality standard."

43. Because Chaves and Rio Arriba counties do not exceed 95% of the ozone NAAQS, sources in those counties cannot be subject to the Ozone Rule.

B. Relative Source Contribution

44. NMED completed modeling and baseline emission inventories to create a base case for ozone impacts. **NMED Ex. 15** (Photochemical Modeling Protocol); **NMED Ex. 16** (2014 Modeling Platform Development and Model Evaluation); **NMED Ex. 17** (Air Quality Technical Support Document); **NMED Ex. 18** (New Mexico OAI Study Photochemical First monthly Webinar May 2020); **NMED Ex. 19** (New Mexico OAI Study Photochemical Monthly Webinar June 2020); **NMED Ex. 20** (2014 and 2023 Emissions, CAMx WRF Sensitivity Tests and Final Model Configuration); **NMED Ex. 21** (Emissions, CAMx, Base and Model Performance, 2023

CAMx Model Status); **NMED Ex. 22** (2014 and 3028 Emissions Development); and **NMED Ex. 23** (Revised 2014 v2 Base Case, 2028 Base Case).

45. NMED ozone monitoring data and modeling shows that the contribution to ozone design values from New Mexico sources is:

- Bloomfield 4.8 ppb
- Navajo Lake 5.6 ppb
- Sub-Station 6.4 ppb
- Dona Ana 3.4 ppb
- Carlsbad City 1.9 ppb

IPANM Ex. 6 at 6 (Blewitt Direct).

46. The combined predicted total Oil and Gas impacts on ozone is only 0.5 ppb. **IPANM Ex. 6** at 6 (Blewitt Direct).

47. The remainder of ozone impacts are from sources outside of New Mexico. **IPANM Ex. 6** at 6 (Blewitt Direct); **NMOGA Appendix A4** at 11 (McNally Direct).

48. New Mexico has no ability to require ozone precursor emissions reductions beyond its borders. **IPANM Ex. 6** at 7 (Blewitt Direct).

49. Under modeling results calculated by IPANM's expert Mr. Doug Blewitt, implementing the Oil and Gas control strategies from the rule results in an insignificant decrease in the amount of ozone. **IPANM Ex. 6** at 8-9 (Blewitt Direct).

50. For all monitors except Carlsbad, the 2028 control base case demonstrates that all monitors will be below the 70 ppb ozone NAAQS without reductions attributable to the proposed Ozone Rules. ***Id.*** at 9. For Carlsbad, without the implementation of further emissions controls, the 2028 base case design value slightly moves from 73.7 ppb to 71.2 ppb. ***Id.*** When the proposed Ozone Rules controls are applied on top of this, the design value reduces by 0.3 ppb to 70.9 ppb. ***Id.***

51. NMED acknowledged that New Mexico has no regulatory control of emissions outside of New Mexico. **NMED Reb. Ex. 11**, at 13 (Morris Rebuttal). NMED also conceded that controls required by the Ozone Rules yield small reductions in ozone concentrations in New Mexico. ***Id.*** However, NMED disagreed that regulation at this small of a scale is inefficient or ineffective. ***Id.*** at 6, 13.

52. At the hearing, NMED reiterated that a majority of the ozone in New Mexico comes from outside of New Mexico. Tr. Vol. 2, 374:17-19 (Morris). NMED further testified that by looking at the contributions from ozone precursor emissions inside New Mexico, 55% of the anthropogenic ozone emissions are from oil and gas at the Navajo Lake monitor, 71% at Hobbs, and 20% at the Desert View monitors. Tr. Vol. 2, 375:5-17 (Morris). Finally, Mr. Morris testified that across New Mexico, oil and gas emission reductions will reduce design values by 1.5 ppb at Navajo Lake and as much as 3 ppb in the San Juan Basin. Tr. Vol. 2, 376:13-20 (Morris).

53. IPANM's witness, Mr. Doug Blewitt, testified that it is important to use modeling to identify which sources contribute to monitored concentrations. Tr. Vol. 1, 272:11-14 (Blewitt).

54. Given the relatively minor impact that Oil and Gas sources have on New Mexico ozone design values, the Board acknowledges that control from the proposed Ozone Rule would not substantially reduce ambient ozone concentrations.

C. Combining NOx and VOC in Modeling Makes it Impossible to Compare Relative Ozone Benefits

55. From the way the modeling was conducted for the Ozone Rule, it is impossible to identify ozone benefits from NOx controls compared to benefits from VOC controls. **IPANM Ex. 6** at 5 (Blewitt Direct); **IPANM Ex. 12** at 14-15 (Blewitt Rebuttal). The modeling results for VOC and NOx were combined; therefore, there is no way to tell which precursor pollutant (NOx or VOCs) was the majority cause. ***Id.***; **NMOGA Appendix A4** at 13 (McNally Direct).

56. The CAMx model is the Comprehensive Air Quality Model with Extensions. **NMOGA Appendix A4** at 4 (McNally Direct). It is a publicly available photochemical model developed by Ramboll US Consulting, Inc. and used widely for air quality planning across the United States. ***Id.***

57. A photochemical model means the model includes chemical transformations that are influenced by light. **NMOGA Appendix A4** at 4 (McNally Direct).

58. If the CAMx source apportionment is used, it is possible to calculate how much ozone is attributable to oil and gas NOx and VOC emissions. **NMOGA Appendix A4** at 13-14 (McNally Direct). This yields a result that shows at all monitors, ozone attributable to New Mexico oil and gas operations is much more NOx limited than VOC limited. ***Id.*** That is, the ozone concentrations are much more affected by NOx emission that VOC emissions.

59. NMED disagrees that the CAMx source apportionment can be used to separate contributions of oil and gas emissions into VOC and NOx. **NMED Rebuttal Ex. 11** at 6-8 (Morris Rebuttal). Particularly because the CAMx Anthropogenic Precursor Culpability Assessment ("APCCA") version of CAMx used in NMED's modeling, "overrides some of the NOx and VOC sensitive conditions in allocating ozone formed to the same source group VOC sensitive and NOx sensitive ozone tracers" thus making the analysis unreliable. ***Id.*** at 7. However, NMED ultimately agreed that modeling indicates that New Mexico ozone formation is more NOx sensitive than VOC sensitive. ***Id.***

60. It is important that NOx and VOC impacts of ozone are separated out when considering ozone formation. **IPANM Ex. 6** at 6 (Blewitt Direct). Ozone formation is non-linear, and therefore, NOx and VOC do not have the same impact on ozone formation. ***Id.*** at 7.

61. When comparing ozone reductions from both NOx and VOC controls, controls on either do not have the same effect. **IPANM Ex. 6** at 13 (Blewitt Direct). Reductions in NOx emissions are more effective than VOC emissions because most areas are NOx limited. ***Id.***; **IPANM Ex. 2** at 4 (Davis Direct).

62. NMED disagreed on the importance of separating out NOx and VOC emissions when evaluating ozone formation, stating that even if one precursor is more sensitive than the other, a reduction in all precursors still reduces ozone. **NMED Rebuttal Ex. 11** at 8 (Morris Rebuttal).

63. At the hearing, NMED reiterated its disagreement that VOC and NOx values should have been separated. Tr. Vol. 2, 379:17-22 (Morris). NMED admitted that this could have been done, but they did not do it because it is standard practice to keep the two combined. Tr. Vol. 2, 379:19-22 (Morris); Tr. Vol. 2:501:25-502:13 (Morris).

64. NMED also acknowledged that ozone concentrations in most of the areas in New Mexico are NOx sensitive, except for the San Juan Basin which has a little bit more VOC sensitivity. Tr. Vol. 2, 380:2-6 (Morris).

65. NMED testified that it did not run separate models that examined NOx only or VOC only controls; rather, the models that were run only included both. Tr. Vol. 2, 393:10-19 (Morris). However, NMED does acknowledge that on a ton-for-ton basis, NOx controls are going to be more effective than VOC controls because most of the areas in New Mexico are more NOx sensitive. Tr. Vol. 2, 397:12-20 (Morris).

66. NMGOA testified that there is no requirement that a rule has to control both precursors. Tr. Vol. 2, 493:4-7 (McNally). Specifically, certain controls are going to be more effective at controlling certain sources. ***Id.***

67. Due to the combined nature of NOx and VOC in the ozone analysis modeling, the Board finds it cannot determine the effectiveness of NOx versus VOC controls on the oil and gas sector.

D. Emission Inventory Uncertainties

68. The NMED Technical Support Document ("TSD") does not contain data regarding the derivation of the base case emission inventory. **IPANM Ex. 6** at 9 (Blewitt Direct). Specifically, the 2028 future year base case "provides no documentation for emission calculations, emission growth (by source category), as well as assumptions regarding emission reductions that will be implemented as a result of new control requirements." ***Id.*** at 9-10.

69. IPANM asserted that the TSD provided limited documentation on electric generating unit ("EGU") sources included in the inventory, as well as the 2028 emission reductions. **IPANM Ex. 6** at 10 (Blewitt Direct). EGU's are large power-plant emission sources and large EGU sources exist outside the borders of New Mexico that have impacts on New Mexico ozone levels. ***Id.***

70. Further, IPANM asserted that there was a lack of documentation on the underlying assumptions used to formulate the 2014 base and 2028 growth cases and the 2028 oil and gas control cases. **IPANM Ex. 6** at 11 (Blewitt Direct). Specifically, there was a 34% increase in emissions in NOx and a 42% decrease in VOCs between the 2014 base case and 2028 growth base case. ***Id.*** at 11. It is unreasonable to assume that there was substantial growth in NOx while VOC declined. ***Id.*** The underlying assumptions are inconsistent between the VOC and NOx inventories. ***Id.***

71. IPANM reiterated this concern in its rebuttal testimony stating that "the emission inventories used to develop the 2014 base case and the 2028 future year base case were not

available for review and were not included in the TSD" and that this omission precluded review of the emission calculations as well as the assumptions used in the development of the inventory. **IPANM Ex. 12** at 8 (Blewitt Rebuttal).

72. Understanding the assumptions used in the modeling is particularly important because of the production decline of an oil and gas well over time. **IPANM Ex. 12** at 9 (Blewitt Rebuttal). As wells age, production declines. As production declines, emissions decline. ***Id.*** No data was provided in the TSD regarding decline versus new production assumptions. ***Id.***

73. "Accurate emission inventories are a necessary component of accurate modeling." **IPANM Ex. 12** at 10 (Blewitt Rebuttal). The lack of documentation available makes it impossible to confirm that accurate oil and gas emission inventories were used in modeling. ***Id.***

74. NMED responded to IPAMN's criticisms of the TSD. **NMED Reb. Ex. 11** at 14 (Morris Rebuttal). Mr. Morris testified that the 2014 base case emissions were based on the WRAP2014v2 inventory and the 2028 base case emissions were based on the WRAP 2028OTBa2 emissions inventory. ***Id.*** Further, links to the documents and webpages that were relied on were provided throughout the TSD and such links document the development of the emission inventories. ***Id.***

75. Mr. Morris discussed the 34% increase and 42% decrease in New Mexico Oil and Gas NOx and VOC emissions, respectively. **NMED Reb. Ex. 11** at 18 (Morris Rebuttal). He highlighted that the TSD compares the 2014 and 2028 New Mexico Oil and Gas NOx and VOC emissions before the New Mexico Oil and Gas emissions are processed by the SMOKE emissions model and the CAMx-ready emission inputs after the New Mexico Oil and Gas emissions are processed by SMOKE. ***Id.*** at 18. Further, the SMOKE emission model "performs temporal

adjustments, spatial disaggregation, and chemical speciation that can result in alterations of the annual emissions." ***Id.***

76. At the hearing, NMED testified that it did not evaluate emissions outside of the 2028 Oil and Gas emissions because the emissions were taken from the WRAP Regional Haze inventories. Tr. Vol. 2, 377:18-23 (Morris). The WRAP inventories "are some of the most vetted and reviewed and documented inventories ever developed by the western states." Tr. Vol. 2, 377:23-25 (Morris).

77. NMED further testified that the WRAP inventories are on numerous websites and webpages. Tr. Vol. 2, 378:1-4 (Morris).

78. IPANM's witness Mr. Blewitt testified that he had looked through the WRAP inventories more than once and he was unable to find any documentation for the base case inventory. Tr. Vol. 2, 451:18-21 (Blewitt). Further, when the inventories were requested through NMED, all that was provided was a tabular list of numbers and emissions rates, rather than specific details. Tr. Vol. 2, 452:2-6 (Blewitt).

79. Mr. Blewitt also discussed the lack of documentation that has been available and that such documentation is important to understand what is present in an inventory. Tr. Vol. 2, 454:10-12 (Blewitt).

80. Mr. Morris testified that production decline is also accounted for in the emission inventories by including a collection of wells of various ages and productions levels and the same assumption is used again for 2028. Tr. Vol. 2, 378:3-16 (Morris).

81. Due to the uncertainties around the emission inventories used in the modeling of the 2014 and 2028 base cases, the Board finds that it cannot determine the validity of the modeling completed in support of this rulemaking.

E. Counties Subject to the Ozone Rule

82. NMED proposed that the rule should be applied to sources in areas of the state that exceed ninety-five percent of the NAAQS for ozone and areas where emission cause or contribute to those ozone levels. *NMED Petition*, Proposed Part 20.2.50 NMAC.

83. IPANM supported limiting the Ozone Rule to those areas of New Mexico with a design value that is greater than 95 percent of the federal ozone NAAQS. **IPANM Ex. 2** at 5 (Davis Direct). Further, IPANM believes it should be the Board's responsibility to add or delete areas subject to the regulations, based on future monitored ozone concentrations. ***Id.*; IPANM Ex. 1** at 1:16-24.

84. NMED opposed IPANM's position that NMED must petition the Board to remove areas of the state from the rule if their design values fall below 95%. **NMED Reb. Ex. 1** at 3 (Kuehn/Palmer Rebuttal). NMED argues that the purpose of Part 50 is to keep areas of the state in compliance with the NAAQS. ***Id.*** at 4. To maintain compliance, the requirements of Part 50 must stay in place. ***Id.***

85. At the hearing, NMED testified that the current rule outlines the counties that are subject to Part 50, as well as a process and timeline for NMED to petition the Board to incorporate new areas. Tr. Vol. 2, 621:4-8 (Bisbey-Kuehn). Further, the rule clarifies that once a source becomes subject to Part 50, it will remain subject to the rule "unless it obtains an air permit with federally enforceable emission limits to lower emissions below the threshold." Tr. Vol. 2, 621:8-12 (Bisbey-Kuehn).

86. NMOGA testified that the current counties that would be included in this rule would be Dona Ana, Eddy, Lea, Sandoval, San Juan, and Valencia. Tr. Vol. 2, 630:20-23 (Smitherman).

87. NMOGA supported NMED in creating a process for areas or counties that are added in the future to the public has an opportunity "to challenge and understand how [the] criteria has been met." Tr. Vol. 2, 631:1-10 (Smitherman).

88. IPANM agreed with NMOGA's testimony. Tr. Vol. 2, 638:12-16 (R. Davis).

89. IPANM objected to the inclusion of Chaves and Rio Arriba Counties. Those counties did not have ambient ozone concentrations in excess of 95% of the ozone NAAQS. IPANM disagreed that emissions in those counties caused or contributed to ozone concentrations in excess of 95% of the NAAQS in other counties or areas of the state. Tr. Vol. 2, 638:12-16 (R. Davis).

90. During the hearing, IPANM dropped its challenge to including a process for removing counties to the rule considering the revisions NMED included in the rule. Tr. Vol. 2, 639:9-14 (R. Davis).

91. Based on the evidence presented, the Board finds the September 16, 2021, version of 20.2.50.2 NMAC with IPANM's revisions is appropriate and should be adopted.

III. 20.2.50.7 NMAC Definitions

92. IPANM proposed several small changes to Section 7. *See* Attached Exhibit A, IPANM's Proposed 20.2.50 NMAC. These changes are not substantive and are meant to further clarify the rule.

93. The Board finds that IPANM's clarifications of Section 7 are well-taken and adopts 20.2.50.7 NMAC as written in IPANM's Proposed Final 20.2.50 NMAC.

IV. 20.2.50.111 NMAC Applicability

94. NMED originally proposed a requirement in Section 111 that a calculation of the potential to emit for sources subject to Part 50 be certified by a qualified professional engineer. Petition for Regulatory Change, at 11, May 6, 2021.

95. NMED explained that requiring a professional engineer to certify calculations "is critical to ensuring the potential air emissions from equipment and processes are properly calculated and representative of the source, and present a true and accurate representation of the source's potential emissions." **NMED Ex. 32** at 24 (Bisbey-Kuehn/Palmer Direct). NMED expressed reservation that without a professional engineer to certify the calculations, the potential emissions could be calculated incorrectly, which has the consequence of leaving equipment out of Part 50. ***Id.***

96. IPANM opposed this requirement noting that certification by a professional engineer is unnecessary and burdensome on small producers. **IPANM Ex. 2** at 6 (Davis Direct); **IPANM Ex. 10** at 8 (Davis Rebuttal). The New Mexico Board of Licensure for Professional Engineers and Professional Surveyors exempts in-house engineers who perform "only the engineering services involved in the operation of the business entity's business" from the requirements of the Engineering and Surveying Practice Act. **IPANM Ex. 2** at 6 (Davis Direct).

97. NMOGA also opposed this requirement, noting that not all registered professional engineers would have the necessary background or specialized oilfield knowledge to be able to complete these calculations. **NMOGA Appendix A1** at 14 (Smitherman Direct). Mr. Smitherman highlighted that a properly trained and experienced company employee may have a significantly better working knowledge of a piece of equipment than a professional engineer. ***Id.*** Finally, Mr. Smitherman testified that the need to use a registered professional engineer to certify calculations

would create a human resource bottleneck that will result in additional costs of implementation of the rule without a discernable benefit. ***Id.*** at 14-15.

98. Oxy highlighted similar concerns as NMOGA and IPANM and additionally described how using an in-house engineer would still meet the goals of Section 111, but would lighten the financial burden that would be required if hiring a professional engineer was necessary. **Oxy Ex. 2** at 20 (Holderman Direct).

99. NMED recognized the burden this requirement could create and amended its proposal to also allow for an "inhouse engineer with expertise in the operation of oil and gas equipment, vapor control systems, and pressurized liquid samples" to certify the required potential to emit calculations. **NMED Rebuttal Ex. 2** at 5 (Proposed 20.2.50 NMAC – Sept. 7, 2021).

100. At the hearing, NMED testified that it was concerned about the necessary qualifications required for doing defensible PTE calculations. Tr. Vol. 4, 1158:1-6 (Bisbey-Kuehn). NMED believed its revisions to include an option to use an in-house engineer satisfies the concerns raised by the parties. Tr. Vol. 4, 1157:24-1158:6 (Bisbey-Kuehn).

101. NMED clarified that it must be a professional engineer or an in-house engineer who would have to certify the calculations and that this would preclude a consultant from being able to certify these calculations. Tr. Vol. 4, 1161:2-1162:4 (Bisbey-Kuehn).

102. NMOGA testified that it agreed with the changes to allow an alternative to a registered, professional engineer to need to certify the calculations. Tr. Vol. 4, 1172:5-21 (Smitherman).

103. IPANM testified that while it largely agreed with NMED's change to include in-house engineers, it still had concerns that small companies will need to use an outside consultant because they do not have an in-house engineer. Tr. Vol. 4, 1183:4-11 (R. Davis).

104. IPANM further testified that the regulatory specialist employed by Mr. Davis's company was not a professional engineer, but had expertise that NMED was looking for in the certifications of the calculations. Tr. Vol. 4, 1184:12-20 (R. Davis). IPANM believed there needs to be additional flexibility in the rule to allow for a regulatory specialist to handle the PTE certification. Tr. Vol. 4, 1184:15-20 (R. Davis).

105. Oxy testified that it supports NMED's changes to the rule to allow for an in-house engineer to certify PTE calculations, but that NMED should allow for consideration of actual emissions as an alternative to a PTE. Tr. Vol. 4, 1196:19-1197:5 (Holderman).

106. The Board finds that allowing an in-house engineer or similarly qualified environmental professional to certify potential to emit calculations is an appropriate addition to the rule and is consistent with NMED's goal to have PTE's properly calculated.

107. Further, the Board concludes that IPANM's recommendation, as reflected in the Proposed Final Rule submitted by IPANM to amend language to 20.2.50.112 NMAC, is supported by the weight of the evidence and will serve the Board's goal of having accurate PTE calculations.

V. 20.2.50.112 NMAC General Provisions

A. General Provisions Comments

108. NMED proposed a requirement in Section 112 that owners and operators install an Equipment Monitoring Tag ("EMT") on certain equipment. **NMED Ex. 32** at 25:17-18 (Bisbey-Kuehn/Palmer Direct). This proposal is a subset of Section 112's proposed establishment of a universal set of requirements applicable to all owners and operators of sources of emissions subject to emissions standards and other requirements of Part 50. ***Id***. at 24:21-23. Section 112(A)(3)-(9) outlines the equipment data and monitoring information that is required to maintained for each source subject to Part 50. ***Id***. at 25:20-22. An EMT interacts with a company's equipment database

and is employed to track equipment information and compliance monitoring events and data. ***Id***. at 25:19-20. Section 112 would require scanning before and after a monitoring event and owners and operators to maintain and submit certain data to comply with the reporting requirements. ***See id***. at 25:22-26:4.

109. NMED reasoned that the EMT requirement will improve its ability to receive, review, and analyze compliance monitoring data for subject sources and will help improve and increase the public's confidence in compliance monitoring. **NMED Ex. 32** at 26:10-13 (Bisbey-Kuehn/Palmer Direct).

110. Section 112(A)(10) requires owners and operators, upon request from the Department, to retain a third party at the owners' or operators' expense to verify any information collected, reported, or recorded pursuant to Part 50. **NMED Ex. 32** at 26:16-18 (Bisbey-Kuehn/Palmer Direct). The Department stated that third-party verification will conserve the Department's time and resources while also improving public confidence. ***Id***. at 27:1-8.

111. Proposed Section 112(B) specifies general monitoring requirements for sources subject to Part 50. **NMED Ex. 32** at 27:13-14 (Bisbey-Kuehn/Palmer Direct). More specifically, Subsection B(3) prescribes the monitoring events for equipment required to have an EMT be initiated and completed by scanning the unit's EMT. ***Id***. at 29:3-4.

112. IPANM opposed the requirements in NMED proposed Section 112(A)(2)-(10) and B(3), and any reference to EMT requirements in the remainder of Part 50 in Sections 113-115, 117-119, and 122-123. **IPANM Ex. 4** at 2:16-19 and 4:16-21 (Brown Direct). As explained by IPANM, the technology challenges and costs, coupled with the lack of any evidence that EMT will reduce ozone precursor pollutants, does not justify the EMT program and its derivatives as part of this Ozone Rule. ***Id***. at 4:17-19.

113. The three (3) monitoring options presented by NMED require frequent monitoring, and while they have been used in refineries and major facilities, IPANM is unaware of these uses in unmanned dispersed sites in an upstream oil and gas region. **IPANM Ex. 4** at 5:7-22 (Brown Direct). Small businesses do not have the financial resources to implement these monitoring functions, and nor are those monitoring functions practical in conditions where upstream oil and gas activities occur. ***Id***.

114. In addition, IPANM engaged a consultant that calculated the following costs for implementing an EMT: (a) $41,000 to $48,000 tagging costs, including LDAR components; (b) $95,000 to $145,000 for implementation of a system to generate a Compliance Database Report ("CDR") along with $10,000 in annual maintenance fees; (c) $5,000 and $7,600 for a third-party audit of an operator's EMT at a single vertical well site and multi-well horizontal well pad, respectively; and (d) $150,000 in annual staffing costs to meet the requirements of EMT. **IPANM Ex. 4** at 5:7-22 (Brown Direct).

115. The Commercial Disposal Group, the Gas Compressor Association, OXY USA, Inc., and NMOGA similarly rejected the EMT requirements for their overly burdensome financial requirements and lack of a demonstrable environmental benefit. **Commercial Disposal Group Appendix C** at 3:1-5:3 (Marquez Direct); **GCA Ex. 15** at 9:1-22:15 (Copeland Direct); OXY USA Ex. 2 at 18:13-19:20 (Holderman Direct); **NMOGA A1** at 5:38-39, 6:26-7:13.

116. The anticipated costs of implementing the requirements, as IPANM determined, shows that the burden imposed upon independent oil and gas owners and operators outweighs the benefits, if any, of the proposed EMT requirement, especially given that the Department has failed to demonstrate that the Ozone Rule will reduce ozone precursor pollutants. **IPANM Ex.** 4 at 7:16-20 (Brown Direct).

117. IPANM maintained that NMED provided no evidence that implementing EMT will have any effect on reducing NOx and VOC emissions. **IPANM Ex. 11** at 4:2-6 (Brown Rebuttal).

118. IPANM also maintained that the Compliance Database Report requirement should be removed from Part 50 because it is cost prohibitive. **IPANM Ex. 11** at 6:17-7:5 (Brown Rebuttal).

119. IPANM also objected to NMED's proposal requiring owners or operators of sources subject to Part 50 to retain a third-party to verify data or information collected. IPANM explained that the third-party audit is costly and does not demonstrate reductions in emissions of ozone precursors. **IPANM Ex. 11** at 9:2-14 (Brown Rebuttal).

120. IPANM requested deletion of the EMT requirement in Sections 112-114, 117-119, and 122-123, and the removal of the CDR requirement in Section 112(A)(6)-(7), and the requirement for an operator to retain third party to verify data (audit). **IPANM Ex. 11** at 2:4-14 (Brown Rebuttal).

121. In their rebuttal testimony, NMED's witnesses Ms. Bisbey-Kuehn and Mr. Palmer noted that both IPANM and GCA proposed to remove Section 112(A)(3)-(9), but rejected the latter's approach. **NMED Rebuttal Ex. 1** at 22:13-17 (Bisbey-Kuehn/Palmer Rebuttal). NMED withdrew the proposed requirement to place a physical tag on each affected source (the EMT requirement) throughout Part 50, but kept the requirement to establish a database system to maintain compliance and general information. ***Id***. at 4-6; Tr. Vol. 5, 1357:3-5 (Bisbey-Kuehn). NMED did not agree to remove requirements that each monitoring event be contemporaneously recorded and uploaded to the database system. ***Id***. at 23:7-8.

122. NMED did not agree with IPANM's proposal to remove the requirement in Section 112(A)(10) that an owner or operator retain a third party to review a CDR to verify compliance

with the rule. **NMED Rebuttal Ex. 1** at 24:4-14 (Bisbey-Kuehn/Palmer Rebuttal). The Department, however, agreed to limit third-party verification requests to once per year and to add authorization for owners and operators to request a hearing for review of the Department's asserted cause for requesting an audit. ***Id***. at 24:14-19; Tr. Vol. 5, 1359:20-21 (Bisbey-Kuehn); Tr. Vol. 5, 1360:15-21 (Bisbey-Kuehn). The owner or operator may challenge the recommendations made by the third-party auditor. Tr. Vol. 5, 1361:6-13 (Bisbey-Kuehn).

123. Lastly, NMED agreed to delete the reference to EMT requirements in Section 112(B)(3). **NMED Rebuttal Ex. 1** at 26:1-5 (Bisbey-Kuehn/Palmer Rebuttal).

124. In the September 16, 2021, version of the Ozone Rule submitted by NMED, it removed the EMT requirement throughout the Ozone Rule, but kept the CDR requirement in Section 112(A)(3)-(8) and the third-party audit provision Section 112(A)(9). The EMT requirement in Section 112(B)(3) was also removed. **NMED Rebuttal Ex. 1** at 26:1-5 (Bisbey-Kuehn/Palmer Rebuttal).

125. At hearing, NMED confirmed that the EMT requirement was removed from the proposed Part 50. Tr. Vol. 5, 1357:6-9 (Bisbey-Kuehn). NMED retained, however, its proposal to require a database system for date- and time-stamping monitoring events under Section 112. Tr. Vol. 5, 1357:16-17; 1359:10-14 (Bisbey-Kuehn). NMED explained that it did not evaluate the cost of the date- and time-stamp technologies, but testified that it hopes to identify free technological "apps" that can perform that function. Tr. Vol. 5, 1369:4-8, 15-19 (Bisbey-Kuehn).

126. The compliance database system provision requires final reports to be entered within three business days and that the Department will develop a list of approved technologies for the "new contemporaneous tracking system." Tr. Vol. 5, 1357:22-23 (Bisbey-Kuehn).

127. The third-party audit relates to data and information that is prepared in the database report that the Department may request under the proposed Ozone Rule. Tr. Vol. 5, 1460:8-13 (Bisbey-Kuehn).

128. NMOGA commented, however, that the CDR is a complex and challenging report to compile, depending on the complexity of an operator's information system; it will require written codes and database integration for completion of the report. Tr. Vol. 5, 1426:14-22 (Smitherman).

129. IPANM and CDG also stated that the generation of the CDR is cumbersome. Tr. Vol. 5, 1436:23-1437:3 (Brown) and 1469:22-1470:1 (Marquez).

130. IPANM also pointed out that operators will have to comply with the GPS and date- and time-stamp requirements on April 2, 2023, but that they will not receive a list of approved technologies until January 1, 2023. Tr. Vol. 5, 1437:4-15 (Brown).

131. IPANM further explained that the submission and date- and time-stamp data requires a mobile application for that data to be uploaded into web-based software. Tr. Vol. 5, 1437:22-1428:1 (Brown). This process is time-intensive, expensive, and will require the services of outside consultants for members of IPANM. Tr. Vol. 5, 1438:2-10 (Brown).

132. Small companies with limited well production will face difficulties with developing a compliance database system if they have not uploaded their data to a central data server or do not have one in place. Tr. Vol. 5, 1439:12-17 (Brown).

133. IPANM also requested a compliance database exception for companies that have limited reporting requirements; in lieu of a database, they may produce a written or electronic record of the data and time of the affected monitoring event. Tr. Vol. 5, 1439:18-1440:12 (Brown).

134. While IPANM lauded the Department's efforts to investigate the compliance reporting systems that some operators may already have in place, four months is not enough time for operators to comply with the implementation of Section 112. Tr. Vol. 5, 1438:2-8 (Brown).

135. IPANM requested that Section 112 be implemented after January 1, 2025. Tr. Vol. 5, 1439:9-11 (Brown).

136. The Department agreed to extend the timeframe to implement the GPS and date- and time-stamp requirements. Tr. Vol. 5, 1582:14-17 (Bisbey-Kuehn)

137. Mr. Brown also testified that the third-party audit would require the dedication of company resources and employees to assist the auditor and could interfere with their normal business and responsibilities. See Tr. Vol. 5, 1441:1-6 (Brown).

138. The third-party audit relates to data and information that is prepared in the database report that the Department may request under the proposed Ozone Rule. Tr. Vol. 5, 1460:8-13 (Bisbey-Kuehn).

139. IPANM proposed that a third-party audit be conducted only in cases of probable extensive noncompliance. Tr. Vol. 5, 1441:7-9 (Brown).

140. NMED responded that it is inappropriate for the certification to address only major instances of noncompliance, as the intent is to compile monitoring records of the owner and operator requirements outlined in Part 50. *See* Tr. Vol. 5, 1586:8-19 (Bisbey-Kuehn).

141. However, NMED's rationale overlooks companies that have limited reporting capabilities. Tr. Vol. 5, 1439:18-1440:12 (Brown).

142. The Department, nevertheless, stated that entities meeting the criteria of a small business facility are not required to prepare a CDR. Tr. Vol. 5, 1439:1586:20-21 (Bisbey-Kuehn).

143. When queried by Chair Suina regarding industry's concerns about additional costs brought about Section 112, the Department dismissed them, stating that demonstrating compliance is essential to meeting emission standards. *See* Tr. Vol. 5, 1377: 6-9, 17-22 (Bisbey-Kuehn).

144. When questioned by Vice-Chair Trujillo-Davis about whether it is the intent of the Department for operators to hire more employees dedicated to inspections, the Department confirmed that it "may be the reality" that hiring employees may be necessary for some owners and operators. *See* Tr. Vol. 5, 1377: 18-25 (Bisbey-Kuehn).

145. The Department intends to hire contractors that will develop a template to assist small operators with database management. Tr. Vol. 5, 1378:12-17; 1420:14-1421:10 (Bisbey-Kuehn).

146. Based on the evidence presented, the Board finds that the EMT requirement, CDR requirement, and third-party audit provision are each overly burdensome and unnecessary for compliance and should each be removed from Part 50.

VI. 20.2.50.113 Engines and Turbines

147. NMED proposed a timeline for existing spark ignited engines to meet new emission limits. **NMED Ex. 32** at 36 (Bisbey-Kuehn/Palmer Direct). NMED believed the proposed timeline allowed owners and operators enough time to come into compliance with the requirements. ***Id.***

148. Instead of meeting emission limits, owners and operators are permitted to reduce the number of hours of operation of a certain piece of equipment to reduce emission rates. **NMED Ex. 32** at 36 (Bisbey-Kuehn/Palmer Direct).

149. New spark ignited engines must meet the emission limit upon their placement into service. **NMED Ex. 32** at 36 (Bisbey-Kuehn/Palmer Direct).

150. The proposed emission limits were based on programs in other states including Pennsylvania, Ohio, and California. **NMED Ex. 32** at 37-48 (Bisbey-Kuehn/Palmer Direct).

151. NPS proposed that lower NOx engine emission limits should be adopted based on regulations adopted in Pennsylvania. NPS, Summary of Technical Testimony to New Mexico Regarding the Proposed Ozone Precursor Rule, 2; **IPANM Ex. 12** at 17 (Blewitt Rebuttal).

152. IPANM contracted with Spirit Environmental to review the feasibility of the emission limits proposed by NPS. **IPANM Ex. 12** at 17 (Blewitt Rebuttal), **IPANM Ex. 13** (Spirit Environmental Report). The report demonstrates that the emission limits proposed by NPS cannot be achieved on a continuous basis. **IPANM Ex. 13** at 25 (Blewitt Rebuttal).

153. NMOGA also testified that the emission limits in the proposed rule are difficult to attain. **NMOGA A1** at 7 (Smitherman Direct). The proposed NOx emission rates in some horsepower ranges result in a single provider situation that can cause a monopoly. ***Id.***

154. Kinder Morgan testified that this section of the proposed rule has the potential for greatest impact on Kinder Morgan's operations. **KM Ex. VI** at 1 (Brindley Direct).

155. Specifically, Kinder Morgan expressed concern with the expense related to meeting the emission limitations of the proposed rule. *See generally* **KM Ex. VI** (Trent Direct).

156. The GCA expressed concern that some of these emission limits are inconsistent with available technology to retrofit existing engines. **GCA Ex. 12** at 4 (Dutton Direct).

157. The GCA was also concerned with the requirement to have the owner or operator of a compressor engine follow a manufacturer-recommended maintenance plan rather than an expert operator-tailored, time-tested and "conditions-based" maintenance plan for which GCA currently operates with. **GCA Ex. 15** at 4 (Copeland Direct). Specifically, GCA highlighted how highly incentivized a compression package operator is to properly maintain their "expensive,

revenue-generating equipment" and that a generic requirement for maintenance was inappropriate given the incentives already at play. **GCA Ex. 15** at 5 (Copeland Direct).

158. CDG testified as to the potential confusion between the more frequent testing required by NMED as opposed to the federal rules. **CDG Ex. B** at 3 (Campsie Direct). CDG suggests that the testing of engines be changed to mirror 40 C.F.R. Part 60, Subpart JJJJ. ***Id.***

159. In its rebuttal testimony, CDG supported NMOGA's changes to lean burn emission factors and highlighted that some existing engines would be unable to meet the emission limits proposed by NMED. **CDG Rebuttal Ex. B** at 3 (Campsie Rebuttal).

160. At the hearing, NMED testified to its bases for their cost estimates versus emissions reductions. Tr. Vol. 6, 1641-1654 (Palmer).

161. NMED also explained there was a shorter compliance timeline for turbines as opposed to engines because there are fewer of them that would be subject to the proposed rule. Tr. Vol. 6, 1675:14-19 (Bisbey-Kuehn).

162. NMED addressed some concerns about compliance of engines that are unable to meet emission standards with the proposed rule by allowing for an Alternative Compliance Plan. The plan would allow operators to determine equivalent amounts of reductions using alternative strategies. Tr. Vol. 6, 1679:717 (Bisbey-Kuehn); Tr. Vol. 6, 1690:14-1691:7 (Bisbey-Kuehn)

163. At the hearing NMOGA provided an overview of the process associated with emission control technologies. Tr. Vol. 6, 1724:6-1735:17 (Lisowski). NMOGA further testified that CO limits should be removed because CO is not a precursor to ozone. The rule should be rewritten to mirror NSPS JJJJ. Tr. Vol. 6, 1737:15-24 (Lisowski).

164. The GCA testified that changes NMED had made to the rule satisfied some of the GCA concerns regarding the emission standards for engines. Tr. Vol. 6, 1749:20-1750:3

(Sheldon). GCA did highlight that even with the changes to the rule, there will still be significant challenges to meet the requirements. Tr. Vol. 6, 1756:9-22 (Dutton).

165. Finally, GCA testified in support of NMED's decision not to include the NPS's requested changes based on the Pennsylvania GP-5 permit. Tr. Vol. 6, 1760:7-13 (Dutton).

166. Kinder Morgan also provided an overview of compressor engines. Tr. Vol. 6, 1806:12-1807:18 (Brindley).

167. Kinder Morgan supported many of the Department's changes, but explained that all the retrofits would be a significant cost. Tr. Vol. 6, 1813:23-1814:8 (Trent).

168. CDG reiterated its testimony that this rule mirror NSPS JJJJ for consistency. Tr. Vol. 6, 1841:3-20 (Campsie).

169. NPS requested that New Mexico watch Colorado to see how their rulemaking will be addressed. This is a change in NPS's position that smaller engines do not need to be addressed in this proceeding. Tr. Vol. 8, 2395:2-6 (Devore); Tr. Vol. 8, 2400:4-9 (Devore).

170. NPS also asserts that there needs to be a limit on CO so operators are applying their controls properly. Tr. Vol. 8, 2397:4-9 (Devore).

171. CAA testified that the proposed rule, as revised, id flexible and allows operators to continue using engines that do not meet the Department's emission standards. Tr. Vol. 9, 2979:7-15 (Orozco). CAA testified that this is inappropriate because operators will not be required to implement cost-effective controls at all of their engines. Tr. Vol. 9, 2979:16-21 (Orozco).

172. IPANM withdrew its challenges based on NPS's testimony. Tr. Vol. 8, 2416:12-20 (Rose).

173. Based on the evidence presented, the Board finds that the emission limits in Section 113 of the September 16, 2021 draft rule for engines and turbines are appropriate.

VII. 20.2.50.117 NMAC Natural Gas Well Liquid Unloading

174. Section 117 applies to liquid unloading operations that include down-hole well maintenance events at a natural gas well. **NMED Ex. 32** at 91 (Bisbey-Kuehn/Palmer Direct).

175. Liquids unloading is an important process to maintain optimal production and maximize the production of the well. **IPANM Ex. 2** at 9 (Davis Direct); **NMED Ex. 32** at 91 (Bisbey-Kuehn/Palmer Direct). "Liquid loading begins when the gas velocity up the production string is not sufficient to lift liquids up to the surface at a pressure that will allow gas production to overcome the surface equipment and flow out of the wellbore." **NMED Ex. 32** at 91 (Bisbey-Kuehn/Palmer Direct).

176. VOC emissions from manual liquid unloading operations occur "when the well is vented to the atmosphere to unload fluids or when the liquids are unloaded through atmospheric tanks and the gas mixed with the liquid is vented to the atmosphere." **NMED Ex. 32** at 93 (Bisbey-Kuehn/Palmer Direct).

177. IPANM supports the use of best management practices to reduce emissions associated manual liquids unloading. **IPANM Ex. 2** at 7 (Davis Direct). IPANM, however, opposes the prescriptive nature of the lift methodologies in Section 117.B(3). ***Id.***

178. IPANM and NMOGA both suggested limiting the applicability of this section to only those events that vent to the atmosphere. **IPANM Ex. 1** at 5 (Proposed Rule Changes); **NMOGA Appendix A1** at 25 (Smitherman Direct).

179. EDF supported NMED's proposal in the original rule to require operators to reduce emissions during liquids unloading. **EDF Ex. WW** at 37 (Alexander Rebuttal). EDF stated that the methods suggested by NMED have been around for a significant amount to time and are both economically and technically feasible for installation and use. ***Id.*** at 37-38.

180. NMED agreed with a number of revisions proposed by NMOGA and IPANM. **NMED Rebuttal Ex. 1** at 68 (Bisbey-Kuehn/Palmer Rebuttal). NMED disagreed with the inclusion of the term "manual" to describe the liquid unloading events as it is NMED's intent that this section cover both manual and automated liquid unloading events. ***Id.***

181. NMED rejected IPANM's proposal to remove the prescriptive paragraph 3 of 20.2.50.117.B, however NMED added additional flexibility to this paragraph to allow operators to use a different control that meets the needs of their source. **NMED Rebuttal Ex. 1** at 70 (Bisbey-Kuehn/Palmer Direct). NMED's changes included the addition of use of an automated control system as suggested by NMOGA. **NMOGA Appendix A1** at 25 (Smitherman Direct); **NMED Rebuttal Ex. 2** at 22 (Proposed 20.2.50 NMAC – Sept. 7, 2021 Version).

182. At the hearing, NMED testified about emissions that occur from well liquid unloading. Tr. Vol. 9, 3131:2-13 (Bisbey-Kuehn). NMED also testified that the basis of the rule requirements being from Colorado Regulation 7, Pennsylvania General Permits 5 and 5A and Wyoming Permitting Guidance. Tr. Vol. 9, 3131:19-3132:16 (Palmer).

183. IPANM testified about the requirement for using a control device on a storage tank during a manual well unloading is a significant safety concern. Tr. Vol. 9, 3143:5-12 (Davis).

184. IPANM also testified that the best management practices listed in Paragraph 3 of Section 117.B are better listed in Paragraph 1, as these are measures that are taken during the life of the well and not necessarily something that is employed as a control strategy for manual liquids unloading. Tr. Vol. 9, 3145:1-10 (Davis).

185. IPANM also requested that NMED revise the recordkeeping requirements to reflect an estimated flow rate during a manual unloading event rather than a maximum potential flow rate. Tr. Vol. 9, 3145:24-3146:7 (Davis). This is because the whole purpose of a manual unloading

event is because a well is not performing at its maximum potential, so a maximum potential flow rate would overestimate emissions. Tr. Vol. 9, 3146:5-7 (Davis).

186. NMED agreed with IPANM that the list of methodologies in Paragraph B.3 be moved to B.1. Tr. Vol. 9, 3150:17-22 (Bisbey-Kuehn).

187. EDF testified in support of the move of the list of best management practices, but reiterated that it did not want the list to be completely removed. Tr. Vol. 10, 3219:15-330:6 (Alexander).

188. NMED also agreed to use the estimated flow rate, instead of the maximum potential flow rate, in the Recordkeeping Requirements Section. Tr. Vol. 9, 3150:24-3151:3 (Bisbey-Kuehn).

189. EDF also testified that it supports the use of artificial lifts as a way to increase production, enhance well economics and reduce emissions. Tr. Vol. 10, 3221:4-9 (Alexander).

190. The Board finds that the language as proposed in the September 16, 2021, version of the rule for 20.2.50.117 NMAC and modified in IPANM's Proposed Final Rule is appropriate as it provides sufficient flexibility for operators to choose the most appropriate methodology to employ during a manual unloading event.

VIII. 29.2.50.120 NMAC Hydrocarbon Liquid Transfers

191. IPANM supports a limit of 13 hydrocarbon liquid load out events to trucks per year.

192. The Board finds that the language as proposed in NMED's September 16, 2021, version of 20.2.50.120 NMAC is appropriate.

IX. 20.2.50.122 NMAC Pneumatic Controllers and Pumps

193. NMED proposed 20.2.50.122 NMAC applies to natural gas-driven pneumatic controllers and pumps, that are located at well sites, tank batteries, gathering and boosting stations, natural gas processing plants, and natural gas compressor stations. **NMED Ex. 32** at 122 (Bisbey-Kuehn/Palmer Direct).

194. The Department's proposal is intended to reduce emissions from pneumatic controllers by replacing high bleed controllers with low bleed or zero bleed models, using instrument air, rather than natural gas, to drive controllers. **NMED Ex. 32** at 125 (Bisbey-Kuehn/Palmer Direct).

195. Pneumatic controllers are "critical for the safe and efficient operation of process equipment in remote areas." **IPANM Ex. 2** at 13 (Davis Direct).

196. A pneumatic controller is a "process control device used throughout the oil and natural gas industry as part of the instrumentation to control the position of valves." **NMED Ex. 32** at 122 (Bisbey-Kuehn/Palmer Direct).

197. Pneumatic controllers can be powered by natural gas or compressed instrument air. **NMED Ex. 32** at 122-23 (Bisbey-Kuehn/Palmer Direct). The controllers can regulate safety shut-downs, positions, fluid levels, pressure, temperature, and flow rate in oil and natural gas production and processing. ***Id.***

198. IPANM opposed the Department's proposal because it is difficult to cost effectively replace gas-driven pneumatic controllers that are currently used. **IPANM Ex. 2** at 13 (Davis Direct). Mr. Davis testified that instrument air is the best solution for running pneumatic controllers in terms of performance and reliability; however, it is extremely difficult to operate an

instrument air system without line power, which is largely unavailable as most sites in Northwest New Mexico. **IPANM Ex. 2** at 13. (Davis Direct).

199. Mr. Smitherman commented that given the very remote locations of these pads, "it is highly impractical to require something other than natural gas operated pneumatics devices in these situations." **NMOGA Appendix A1** at 28-29 (Smitherman Direct).

200. Mr. Davis testified that IPANM members attempted to use other means to install instrument air systems for sites without line power, such as a solar power system. **IPANM Ex. 2** at 14 (Davis Direct). Mr. Davis expressed concern about the reliability of solar power and the cost of installation. **IPANM Ex. 2** at 14 (Davis Direct). IPANM also attempted a pilot project with rotary electric actuators and still had a number of malfunctions, including an increase in the amount of gas sent to the tanks due to the actuators not being able to close quickly enough. **IPANM Ex. 2** at 15 (Davis Direct).

201. IPANM and NMOGA suggested an approach, similar to Colorado, that couples regulations to phase-out gas-driven pneumatics with a percentage of liquid production approach and use of intermittent bleed pneumatic controls. **IPANM Ex. 2** at 15 (Davis Direct); **NMOGA Appendix A1** at 29 (Smitherman Direct).

202. NMOGA suggested the Department focus on larger sites that are more likely to have line power, making a transition to instrument air more cost effective. **NMOGA Appendix A1** at 29 (Smitherman Direct).

203. Oxy also recommended basing a phase out on historic liquids production, rather than number of controllers at a specific site. **Oxy Ex. 2** at 14 (Holderman Direct). This would mean that the controllers that are actuated more frequently are the first to be phased-out. **Oxy Ex. 2** at 14 (Holderman Direct).

204. GCA encouraged the Department to treat intermittent pneumatic controllers similarly to non-emitting controllers recognizing that intermittent controllers only emit during the actuation cycle. **GCA Ex. 17** at 5 (Carr Direct).

205. EDF encouraged NMED to move up the proposed retrofit schedule of gas-powered pneumatic controllers. **EDF Ex. RR** at 9 (Lyon Direct); **EDF Ex. UU** at 14 (Alexander Direct).

206. CAA testified in support of zero emission pneumatic controllers and highlighted solar and electric technology that make this possible. CAA also believes that these methods are cost-effective to implement through retrofits. **CAA Ex. 3** at 8-10 (McCabe Direct).

207. CAA proposed modifications that would accelerate the compliance timeline, increase the fraction of non-emitting controllers by a fixed percentage, and provide an incentive to operators who convert 75% of their controllers early.

208. NMED revised the section in response the comments received from all the parties. **NMED Rebuttal Ex. 2**.

209. NMED disagreed with utilizing the "Colorado Approach" of regulating pneumatic controllers based on historic production volume, because that approach was based on already reduced emissions from previous regulatory efforts. **NMED Rebuttal Ex. 1** at 83-84 (Bisbey-Kuehn/Palmer Rebuttal).

210. NMED's revisions include allowing for exclusion from 20.2.50.122 NMAC for temporary and portable pneumatic controllers that are used in specific activities. **NMED Rebuttal Ex. 2** at 30. (Proposed 20.2.50 NMAC- Sept. 7, 2021 Version).

211. In rebuttal, IPANM and NMOGA reiterated their concerns with the expense and feasibility of instrument air installations at remote well pads. Particularly, solar is not as reliable

as the Department assumed it to be. **IPANM Ex. 10** at 17-18 (Davis Rebuttal); **NMOGA Ex. 42** at 8 (Meyer Rebuttal); **GCA Ex. 32** at 6 (Davis Rebuttal).

212. Oxy's rebuttal focuses particularly on the difficulty to achieve the stated timelines in the rule. Stating that NMED should instead consider using the previously proposed historic production amounts to determine implementation timelines. **Oxy Rebuttal Ex. 2** at 5-6 (Holderman Rebuttal).

213. GCA advocates strongly in its rebuttal that intermittent pneumatic controllers should be part of the solution for reducing emissions. **GCA Ex. 32** at 8 (Davis Rebuttal).

214. During the period of rebuttal testimony, CAA on its own came to an agreement with Oxy. **CAA Ex. 23** at 2 (McCabe Rebuttal).

215. The Oxy-CAA agreement included support for an accelerated replacement schedule of venting pneumatic controllers at well production facilities. **CAA Ex. 23** at 2 (McCabe Rebuttal). Notably, in agreeing to an accelerated replacement schedule, CAA supports the switch to a liquid production metric for retrofit timing. ***Id.*** at 5.

216. NMED testified that the basis for the proposed requirements for pneumatics is from Colorado's Regulation 7 with some slight adjustments. Tr. Vol. 7, 2022:2-23 (Palmer).

217. NMED testified that the proposed regulation allows for similar flexibility as Colorado, where operators can prioritize high-producing production facilities. There is also a built in "off-ramp" for owners meeting a 75% target for nonemitting controllers by January 1, 2025. If after January 1, 2027, there are still units that are not cost-effective to replace, an owner can submit an analysis to NMED on the retrofit costs. Tr. Vol. 7, 2022:24-2023:13 (Palmer).

218. NMED testified that much of the testimony from certain parties proposed a regulatory approach to pneumatic controllers that was adopted in Colorado; however, NMED explained that this was inappropriate for New Mexico. Tr. Vol. 7, 2025:14-25 (Bisbey-Kuehn).

219. Particularly, NMED testified that Colorado already had requirements in place for pneumatic controllers that has already achieved significant emission reductions whereas New Mexico has no such system in place and is thus starting in a different position. Tr. Vol. 7, 2026:12-2027:15 (Bisbey-Kuehn).

220. NMED provided clarification that January 1, 2023, would be the date that some of the requirements would need to be met for creating a controller count list. Tr. Vol. 7, 2042:8-11 (Bisbey-Kuehn).

221. CAA testified at the hearing about a joint proposal between CAA, EDF, CCP, NAVA and Oxy that was also supported by NPS. Tr. Vol. 7, 2057:16-22 (McCabe).

222. CAA explained that the Colorado rule, which was adopted with unanimous industry support, is a much faster approach than New Mexico's. Tr. Vol. 7, 2066:18-23 (McCabe).

223. CAA, EDF, CCP, NAVA and Oxy explained that their joint proposal would result in a more rapid transition to zero emission controllers and would also ensure that the phase-out occurs in a more efficient and fair way. Tr. Vol. 7, 2068:20-25 (McCabe).

224. CAA emphasized that the joint proposal is based on liquids produced rather than controller counts. Tr. Vol. 7, 2069:11-13 (McCabe).

225. NMOGA testified that it accepted the NMED's pneumatics proposal because it balances the needs of emissions reductions with the realities of the oil and gas business in New Mexico. Tr. Vol. 7, 2109:5-13 (Smitherman).

226. IPANM testified that a production phase-out approach, rather than a controller count approach, is an appropriate path forward. Tr. Vol. 7, 2189:1-4 (Davis).

227. IPANM also testified that the Colorado Regulation has flexibility for small producers that IPANM felt was critical to be in the Ozone Rule for smaller producers and lower-producing wells. Tr. Vol. 7, 2189:4-13 (Davis).

228. IPANM discussed the importance of also using intermittent controllers that do not continuously bleed natural gas during normal operations, but bleeds back the actuation gas after the actuation has taken place. Tr. Vol. 7, 2189:14-25 (Davis).

229. IPANM also highlighted how much work is devoted to instrument air installations. Such an installation usually requires design and packaging of the air package, delivery, trenching in air lines and power, and determining necessary setbacks from other equipment. Tr. Vol. 7, 2191:19-2192:3 (Davis).

230. IPANM reiterated its concerns about getting commercial line power to many of its remote sites. Significant areas in Northwest New Mexico lacked reasonably accessible commercial line power. There are significant concerns with lines, rights of way and infrastructure in general to be able to have line power on a site. Tr. Vol. 7, 2192:4-2193:13 (Davis).

231. IPANM's major concern with this part of the Ozone Rule surrounds fairness to smaller producers and not forcing them through the regulation to close or shut-in their wells earlier than anticipated. Tr. Vol. 7, 2199:2-2200:8 (Davis); Tr. Vol 7, 2201-24-2202:6 (Davis).

232. Oxy also testified to the difficulties of getting line power out to certain areas of the state as being potentially cost-prohibitive when trying to transition to non-emitting pneumatic controllers. Tr. Vol. 7, 2212:9-23 (Holderman).

233. Kinder Morgan testified that it supported NMED's proposed Ozone Rule as described in NMED's earlier testimony. Tr. Vol. 7, 2282:1-7 (Nolting).

234. EDF proposed a shorter timeframe for transitioning to non-emitting pneumatic controllers. EDF believes its proposal is both economically reasonable and practical. Tr. Vol. 10, 3226:6-18 (Alexander).

235. NMED rebutted the joint proposal from Oxy and NGO's by stating it is still inappropriate for New Mexico because NMED did not have a current methodology to determine the total historic percentage of liquids produced. Tr. Vol. 7, 2239:12-23 (Bisbey-Kuehn).

236. NMED responded to IPANM's proposal that NMED include an exception for lower producing wells by saying that it would exempt 269 out of 324 well operators who have oil production. Tr. Vol. 7, 2243:5-2 (Palmer).

237. EDF testified about three studies it considered to support the requirements surrounding pneumatic controllers and how the best way to reduce emissions from pneumatic controllers is to replace them with zero emitting devices. Tr. Vol. 7, 2224:18-24 (Lyon).

238. The Board finds that NMED's September 16, 2021, version of the rule for 20.2.50.122 is not appropriate and finds that the IPANM's production-based approach in the Proposed Final 20.2.122 NMAC is appropriate.

X. 20.2.50.124 NMAC Well Workovers

239. NMED proposed 20.2.50.124 NMAC specifies requirements for workovers performed at oil and natural gas wells. **NMED Ex. 32** at 148 (Bisbey-Kuehn/Palmer Direct).

240. A well workover is a supplementary maintenance activity that is required for some wells to maintain production or minimize production declines. **NMED Ex. 32** at 148-49 (Bisbey-

Kuehn/Palmer Direct). "Typical workovers include rod, tubing and casing repairs; siphon string or artificial lift installation paraffin removal; and pump repairs." ***Id.***

241. Workovers are performed on wells that have previously been completed. The wells need to be prepared before workover operations can begin. Preparation includes venting pressure before it is safe to remove tubing head and installing blowout preventers. **NMED Ex. 32** at 149 (Bisbey-Kuehn/Palmer Direct). A workover is usually a short duration project that lasts only a few days or weeks at most. ***Id.***

242. During the workover, the well is allowed to vent to the atmosphere to provide for the safety of the rig crew. **NMED Ex. 32** at 149 (Bisbey-Kuehn/Palmer Direct); Tr. Vol. 9, 3098:15-20 (Bisbey-Kuehn).

243. NMED proposed to reduce emissions during a well workover through the implementation of best practices, including the following: reducing wellhead pressure before blowdown to minimize the volume of natural gas vented; monitoring manual venting at the well until the venting is complete; and routing natural gas to the sales line, if possible. **NMED Ex. 32** at 149-50 (Bisbey-Kuehn/Palmer Direct); Tr. Vol. 9, 3099:2-20 (Bisbey-Kuehn).

244. As part of the best practices, NMED's proposal requires an operator to notify all residents within one-quarter mile of the well at least three days before the workover by certified mail. **NMED Ex. 32** at 150 (Bisbey-Kuehn/Palmer Direct).

245. IPANM objected to this proposal on the grounds that the three-day advance notice requirement would unnecessarily delay well workers and result in more miles traveled by workover rigs to perform routine downhole maintenance. **IPANM Ex. 2** at 18 (Davis Direct).

246. IPANM testified that when a workover rig is working in an area and a well in close proximity "goes down, we may need to be able to move the rig to the location within 24 hours to avoid having the rig leave the area and return later." **IPANM Ex. 2** at 18 (Davis Direct).

247. NMOGA also objected to the proposal on the grounds that it will have no effect on emissions. NMOGA requested an exemption for the three-day notice when routine well work that is not expected to generate significant emissions is being completed. **NMOGA Appendix A1** at 30 (Smitherman Direct).

248. NMOGA also proposed that the Department include more flexibility in the type of notice since there are many new methods to communicate that are easier and more transparent that using certified mail. **NMOGA Appendix A2** at 31 (Smitherman Direct).

249. In NMED's rebuttal, the Department agreed to include more flexible means of communication, other than certified mail to notify local landowners. **NMED Rebuttal Ex. 1** at 97 (Bisbey-Kuehn/Palmer Rebuttal).

250. NMED also included an exception to the three-day notification requirement for emergency or routine workovers due to upsets and equipment malfunctions. For the exception, NMED shortened the notice time to 24-hours of the event. **NMED Rebuttal Ex. 1** at 97 (Bisbey-Kuehn/Palmer Rebuttal).

251. IPANM's rebuttal reiterated its concerns with the three-day notice provisions and questioned how a notification to nearby residents actually results in any reduction in VOC emissions. **IPANM Ex. 10** at 23 (Davis Rebuttal).

252. At the hearing Ms. Bisbey- Kuehn explained the changes NMED had made to the rule that were outlined in her rebuttal testimony. Tr. Vol. 9, 3097:9-3104:23 (Bisbey-Kuehn).

253. Mr. Davis of IPANM testified that most of IPANM's concerns with the rule have been addressed by NMED; however, it still had a concern about the administrative burden of the required notification for routine workovers. Tr. Vol. 9, 3107:25-13 (Davis).

254. Further, Mr. Davis testified that the quarter-mile distance could encompass a lot of residents for notification purposes and this would be a serious administrative burden in more densely populated areas. Tr. Vol. 9, 3108:14-3109:19 (Davis).

255. IPANM suggested that NMED allow for alternate notification options such as erecting signs at the entrance of the well sites and creating a smaller buffer for notification to residents as some wells are in residential areas and this would require a significant amount of notice. Tr. Vol. 9, 3109:6-19 (Davis).

256. The Board finds that the language as proposed in IPANM's September 16, 2021, version of the Ozone Rule for 20.2.50.124 should be adopted.

XI. EDF Proximity Proposals

257. In addition to NMED's proposals, EDF made its own proposal regarding proximity of facilities to occupied residences as part of a request to increase the frequency of Leak Detection and Repair ("LDAR") monitoring in 20.2.50.116. **EDF Ex. SS** at 4 (Hull).

258. EDF proposed that operators must perform LDAR inspections of well sites at greater frequencies when a regulated site is located within 1,000 feet of an occupied area. **EDF Ex. SS** at 4 (Hull).

259. This proposal included adding a new definition to 20.2.50.7 NMAC for an "occupied area" that generally provided boundaries and criteria for what would be considered an occupied area. **EDF Ex. VV** at 3 (Proposed Redline of Rule). It also included additional

monitoring requirements under 20.2.50.116(C)(3)(c) NMAC that increased LDAR monitoring frequency for wells near occupied areas. ***Id.*** at 17.

260. EDF was joined by CAA, CCP, NAVA, and Oxy in their proposal. EDF Rebuttal NOI at 1-2; Tr. Vol. 8, 2539:17-23 (Lyons) The New Mexico Environmental Law Center also supported this proposal. Tr. Vol. 8, 2577:14-22 (Lyons).

261. At the hearing, EDF's witness, Dr. Lyons testified about this proposal and its purpose to "protect frontline communities from excess emissions while also helping New Mexico avoid ozone nonattainment". Tr. Vol. 8, 2539:17-2540:9 (Lyons).

262. Another EDF witness, Ms. Hull, testified in response to a question about how the proximity proposal relates to exceedances of federal ozone NAAQS that the proximity proposal is a "reference to all [pollutants] . . . that are associated with oil and gas that are creating negative health impacts." Tr. Vol. 8, 2621:1-6 (Hull).

263. EDF witness, Dr. Thompson testified regarding the proximity proposal that she believes it goes to both compliance with NAAQS and preventing unnecessary health risks. Tr. Vol. 8, 2731:18-19 (Thompson).

264. The proximity proposal was questioned by IPANM as being unrelated to regulation of ozone precursors and implementing ozone NAAQS. Tr. Vol. 8, 2733:8-22 (Rose).

265. The Board finds that the proximity proposal is unrelated to the implementation of the federal ozone NAAQS and therefore, cannot be included in the final rule.

XII. 20.2.5.50.7.OO NMAC and 20.2.50.125 NMAC: Small Business Facilities

266. 20.2.50.7.OO NMAC defines a "small business facility "as a source that is independently owned or operated by a company that is a not a subsidiary or a division of another business, employs no more than 10 employees at any time during the calendar year, and has a gross

annual revenue of less than $250,000. Part-time, temporary, and limited-service workers are considered employees. **NMED Ex. 102** at 2:14-18 (Day/Bisbey-Kuehn). Independent contractors are not deemed "employees" under the proposed definition. Tr. Vol. 3, 888:15-17 (Bisbey-Kuehn).

267. The Department obtained information on global ultimate parent companies and their associated revenue and employment data. **NMED Ex. 102** at 3:13-14 (Day/Bisbey-Kuehn). 154 facilities out of a total of the Department-identified 460 matched New Mexico facilities were identified as global ultimate parent companies. ***Id***. at 6:5-12.

268. The Department provided analysis on revenues and employment of well-owners/operators that would be subject to the Part 50. Tr. Vol. 3, 871:20-24 (Bisbey-Kuehn).

269. The U.S. Small Business Administration ("U.S. SBA") defines industry size standards that identify what entities qualify as a small business. **NMED Ex. 102** at 6:14-19 (Day/Bisbey-Kuehn). The Department included the size standards for potentially affected owners/operators and other facilities and, using global ultimate parent company information identified for each facility, identified how that global ultimate parent would be classified under U.S. SBA size definition. ***Id***. at 7:5-7.

270. On cross-examination, Ms. Bisbey-Kuehn testified that the definition of a small business under the New Mexico Small Business Regulatory Relief Act, which is distinct from U.S SBA definition of a small business, provides an example of a threshold and may be appropriate in certain publications; however, she argued a need for strong emissions reductions without explaining why the New Mexico definition of a small business would not meet that end. *See* Tr. Vol. 3, 887:6-13 (Bisbey-Kuehn).

271. Out of a total of 406 ultimate parents with revenue and employment data evaluated by NMED, the Department identified 355 global ultimate parent companies that meet the SBA

definition of a small business. **NMED Ex. 102** at 7:11-18 (Day/Bisbey-Kuehn). "The 355 small global ultimate parent companies are associated with 359 small owner/operators and the 51 not small global ultimate parent companies are associated with 77 not-small owner/operators." Tr. Vol. 3, 875:1-4 (Bisbey-Kuehn).

272. The Department employed two methods to calculate the value per well. The first method estimated average revenue per well for each owner/operator by dividing the global ultimate parent revenues associated with the owner/operator by the total number of wells reported in the Go-Tech data for that owner/operator. ***Id***. at 8:14-16. The Department noted that global ultimate parent revenue per well can be highly variable. **NMED Ex. 102** at 9:4-5 (Day/Bisbey-Kuehn).

273. Under the second method, the Department estimated the average value of the oil and gas production per well for each owner/operator. **NMED Ex. 102** at 9:11-12 (Day/Bisbey-Kuehn). Using dollars per barrel (BBLS) and dollars per million BTU (MMBTU) for gas, the Department calculated the average value of the production from wells of each type per owner/operator. ***Id***. at 9:13-15.

274. The Department proposed $250,000 as the revenue threshold to meet the small business definition. **NMED Ex. 102** at 12:14-15 (Day/Bisbey-Kuehn).

275. The Department proposed that an owner or operator of a facility that meets the definition of a small business facility must comply with Sections 111 and 125. **NMED Ex. 102** at 10:16-17 (Day/Bisbey-Kuehn).

276. NMED's proposed Section 125 requires that small business facilities operate equipment based on manufacturer specifications, maintain a database of VOC and NOx emissions, are subject to the reporting requirements in Section 112 and the fugitive leak monitoring

requirements in Section 116, and must file an annual certification stating that it meets the definition of a small business facility. **IPANM Ex. 10** at 25:1-10 (Davis Rebuttal).

277. NMED explained that its definition of a small business facility was developed to recognize the unique challenges that smaller independent operators may face in determining applicability of complex regulations and financing the initial and ongoing costs of compliance with Part 50. **NMED Ex. 102** at 10:20-23 (Day/Bisbey-Kuehn).

278. Accordingly, 15% percent of companies, or 82 out of a total of 535 companies, would be considered small business facilities. ***Id***. at 12:19-22. The Department also calculated that the cost of compliance for a small business facility at 2.6% of total revenue. ***Id***. at 13:5-7. "The proposed thresholds were chosen because the data compiled by ERG indicated that those thresholds balanced the cost of compliance with Part 50 against the company's ability to finance the costs of compliance and would not put the majority of companies at risk of becoming insolvent and therefore cause wells to be abandoned without remediation." Tr. Vol. 3, 880:22-881:3 (Bisbey-Kuehn).

279. The Department further explained that three criteria were developed to distinguish small and large companies: ownership structure, total number of staff employed, and annual revenue. **NMED Ex. 102** at 13:15-14:15 (Day/Bisbey-Kuehn). The Department was unclear as to when the certification for annual revenue becomes applicable. Tr. Vol. 3, 889:18-25 (Bisbey-Kuehn).

280. NMED testified that 82 companies that operate 4,500 wells would qualify as a small business facility, 15 percent of the total companies subject to Part 50 are considered owners or operators of small business facilities, and 9 percent of the total wells would be considered small business facilities. Tr. Vol. 3, 882:25-883:6 (Bisbey-Kuehn). Part 50 would cost companies

approximately 2.6% of total revenue to comply. Tr. Vol. 3, 883:15-17 (Bisbey-Kuehn). The estimated annual average of the cost of compliance was $37,945.00. Tr. Vol. 3, 883:18-21 (Bisbey-Kuehn); **NMED Ex. 102** at 11:18-20 (Day/Bisbey-Kuehn).

281. Accordingly, the Department proposed that owners/operators of small business facilities comply with emission reductions, monitoring, and operational requirements under Sections 111 and 125. In addition, small business facilities are to conduct fugitive leak monitoring in Section 116(C) and (D). **NMED Ex. 102** at 15:1-23 (Day/Bisbey-Kuehn).

282. Under the small business facility exception, "the Department is rightsizing the rule to require robust equipment and emission monitoring for smaller, independent operations, while simultaneously balancing those requirements against the unintended negative environmental consequences resulting from early abandonment." **NMED Ex. 102** at 14:12-15 (Day/Bisbey-Kuehn).

283. While the Department's $250,000 gross revenue cutoff is based on an operator's average well revenue being less than the cost of compliance, the Department's objective does not provide appropriate relief for small businesses or stripper wells. Tr. Vol. 3, 900:21-23; 902:2-9 (Davis). Low production wells and assets will suffer and incur compliance costs related to implementation of the proposed definition. Tr. Vol. 4, 988:5-12 (Smitherman).

284. First, the Department's analysis did not include costs of compliance with pneumatic controllers and pumps in Section 122. Tr. Vol. 3, 902:10-13 (Davis).

285. Second, while relief is provided to companies that operate a small number of wells, there are many operators that have large numbers of stripper wells and make economic decisions on a well-by-well basis; they are unlikely to absorb the cost of compliance on one well if it cannot support that cost by another well's revenue, thereby resulting in premature abandonment. Tr. Vol.

3, 902:16-24 (Davis); Tr. Vol. 4, 990:20-24 (Smitherman). Smaller businesses have a tougher challenge when they have a larger percentage of low-rate producers in their well inventory. Tr. Vol. 3, 902:16-24 (Davis); Tr. Vol. 4, 1003:22-24 (Smitherman).

286. As stripper wells operate at lower pressure and lower throughput to the tank, their emissions are lower than higher-pressure type wells. Tr. Vol. 3, 936:7-17 (Davis); Tr. Vol. 4, 1026:11-12 (Bisbey-Kuehn). Stripper wells produce external benefits and costs. Tr. Vol. 4, 1021:10-13 (Smitherman). If external costs of a stripper well are considered when evaluating the regulatory definition of a "small business," it is also appropriate to consider the external benefits provided by those wells. Tr. Vol. 4, 1023:14-20 (Smitherman).

287. Companies examine wells on an individual basis—not on a company profit basis—and thousands of wells would be prematurely plugged and abandoned due to the implementation of the small business definition. Tr. Vol. 3, 903:2-4 (Davis); Tr. Vol. 4, 991:4-9 (Smitherman). A well is plugged and abandoned if future revenue does not justify the investment on that asset. Tr. Vol. 3, 938:22-938:2 (Davis).

288. A well's production and potential to emit ("PTE") are better measures for which to base relief because operators make economic decisions on a well-by-well basis. Tr. Vol. 3, 903:15-20 (Davis).

289. New Mexico has approximately 31,000 stripper wells, totaling roughly 61% of wells in the state. Tr. Vol. 3, 940:22-941:1 (Davis); Tr. Vol. 4, 1025:7-9 (Bisbey-Kuehn).

290. The ten-employee cutoff was "a starting point on this definition," but the Department did not engage with potentially affected business when it formulated its small business definition. Tr. Vol. 3, 890:17-22; 891:3-8 (Bisbey-Kuehn). The number was derived from a construction permit fee regulation. Tr. Vol. 3, 894:5-10 (Bisbey-Kuehn).

291. The ten-employee cutoff and gross income threshold are too limiting and will exclude most oil and gas operators in New Mexico. **IPANM Ex. 2** at 20:7-8 (Davis Direct).

292. The ten-employee cutoff excludes many of the smaller operators that need relief from some of the provisions in Part 50. Tr. Vol. 3, 901:1-3 (Davis).

293. IPANM objected to the Department's proposal because few, if any, oil and gas operators in New Mexico meet the definition of a small business facility. **IPANM Ex. 2** at 20:7-8 (Davis Direct).

294. NMOGA also contends that no oil and gas operator would qualify under the small business facility definition. **NMOGA Ex. A1** at 31:15-16 (Smitherman Direct). 87% of all gas wells will not be able to justify the required compliance costs and operators will be forced to shut them in. ***Id***. at 31:18-21.

295. There are many small businesses in New Mexico that would not qualify for the small business exemption. Many small businesses that operate multiple stripper wells would be affected because the cost of compliance would exceed their gross annual revenue. See Tr. Vol. 3, 911:4-25 (Davis).

296. The gross revenue of an oil and gas producer is tied to the price of oil and gas in the market. It increases or decreases with the price of oil or gas cannot be passed on by the producer nor can an increase in cost. **IPANM Ex. 2** at 20:10-12 (Davis Direct).

297. The gross annual revenue is not a measure of the business's profitability. Tr. Vol. 3, 901:10-14 (Davis). The Department agreed. **NMED Rebuttal Ex. 1** at 99:1-2. (Kuehn/Palmer Rebuttal). The upfront costs of drilling a well and the infrastructure needed to move the product to a processing facility as well as the ongoing operating expenses are not factored into gross revenues. **IPANM Ex. 2** at 20:12-15 (Davis Direct).

298. In all, the variability with commodity pricing creates a lack of regulatory certainty and is not a good measure of profitability. **IPANM Ex. 10** at 4:2-3 (Davis Rebuttal); Tr. Vol. 3, 901:10-14 (Davis).

299. IPANM also identified issues related to NMED's sole consideration of wells that could not support the cost of compliance on average. **IPANM Ex. 10** at 4:5-7 (Davis Rebuttal). In IPANM's analysis, there is a positive correlation between the higher percentage of stripper wells and a higher percentage of gross revenue for the cost of compliance. ***Id***. at 4: 9-13. A well's production and PTE are better measures to assure necessary relief because they are independent of commodity prices. ***Id***. at 4:14-18.

300. The Department conceded that it is amenable to adjusting or "right-sizing the definition" based on the feedback at the hearing. *See* Tr. Vol. 3, 895:16-21 (Bisbey-Kuehn).

301. While IPANM did not propose alternative language to the small business facility definition and requirements, it initially recommended that 20.2.5.50.7.OO and 20.2.50.125 NMAC not be adopted. **IPANM Ex. 2** at 20:19-22 (Davis Direct). IPANM maintained that the low volume and low decline rate gas wells in the San Juan Basin and across New Mexico will be unable to meet the cost of compliance. ***Id***. at 21:10-12; ***see also*** **NMOGA Ex. A1** at 31:24-26 (Smitherman Direct).

302. The Department did not agree to remove Section 125. **NMED Rebuttal Ex. 1** at 99:10-11 (Kuehn/Palmer Rebuttal). In response to IPANM's concern that gross annual revenues are not a good measure of profitability, the Department stated that EPA guidance suggests that impacts on small businesses are generally assessed by comparing direct compliance costs to revenues. ***Id***. at 99:1-5.

303. However, EPA guidance is not an appropriate impact analysis for oil and gas operations in New Mexico. Tr. Vol. 3, 908:21-24 (Davis).

304. The Department has admitted that gross revenues are not a good measure of profitability. Tr. Vol. 3, 908:22-24; **NMED Rebuttal Ex. 1** at 99:1-2. (Kuehn/Palmer Rebuttal).

305. Lastly, IPANM recommended that the Board consider the definition of a "small business" under the New Mexico Small Business Regulatory Relief Act, which "means a business entity, including its affiliates, that is independently owned and operated and employs fifty or fewer full-time employees." **IPANM Ex. 10** at 6:7-12 (Davis Rebuttal); Tr. Vol. 3, 901:3-6 (Davis).

306. The Department has stated that a 50-employee threshold is unacceptable, but it provided no reason for its assertion. *See* Tr. Vol. 3, 946:6-18 (Day).

307. IPANM pointed out, and the Department recognized, that requirements for proper operations and maintenance to reduce emissions, fugitive leak requirements, a database of VOC and NOx emissions, and Section 112 would still be applied. Tr. Vol. 3, 905:23-906:8 (Davis); Tr. Vol. 4, 1030:16-25 (Bisbey-Kuehn).

308. IPANM suggests that the definition of a "small business facility" be amended to reflect that a small business is a company that is a not a subsidiary or a division of another business and that employs less than 50 employees at any time during the calendar year, and that "employees" also include contract workers. **IPANM Ex. 10** at 6:7-12 (Davis Rebuttal); Tr. Vol. 3, 901:3-6 (Davis).

309. IPANM supports reducing the requirements applicable to small businesses and notes that the requirements are not a complete exemption of the wells subject to the provision. **IPANM Ex. 10** at 26:2-4 (Davis Rebuttal).

310. NMED's proposed 20.2.50.125(G) NMAC states that a source that meets the definition of a small business facility can be required to comply with the other sections of 20.2.50 NMAC if the Secretary finds based on credible evidence that the source (1) presents an imminent and substantial endangerment to the public health or welfare or to the environment; (2) is not being operated or maintained in a manner that minimizes emissions of air contaminants; or (3) has violated any other requirement of 20.2.50.125 NMAC. **NMED Ex. 102** at 15 (Day/Kuehn).

311. The Department explained that proposed 20.2.50.125(G) incentivizes owners and operators of small business facilities to comply with 20.2.50.125 providing for an applicability onramp for the other sections of Part 50 if they fail to do so. **NMED Ex. 102** at 15 (Day/Kuehn).

312. The record, however, contains no support as to how proposed 20.2.50.125(G) NMAC provides an applicability on ramp for owners and operators subject to the Ozone Rule. *See* Tr. Vol. 4 *in passim*.

313. IPANM recommended that proposed 20.2.50.125(G) not be adopted for lack of record support.

314. In addition, the Department's enforcement authority is independent of the Board's authority and derives directly from the Legislature. *See* NMSA 1978 § 74-2-12(A)(1) and (2).

315. The Legislature has not delegated authority to the Board that allows it to confer enforcement authority unto the Department. *See* NMSA 1978 § 74-2-5(A)-(G).

316. The Board, consequently, does not have the requisite authority to confer enforcement authority unto the Department as provided in Section 125(G) because it is inconsistent with the Air Act and the duties and powers of the Board. *See* § 74-2-12(A)(1) and (2); § 74-2-5(A)-(G).

317. The Board, therefore, does not have authority to promulgate proposed Section 125(G). *See Wilcox v. New Mexico Bd. of Acupuncture & Oriental Med*., 2012-NMCA-106, ¶ 7.

318. The Board finds that the language as proposed in the September 16, 2021, version of the Ozone Rule for 20.2.50.7.OO and 20.2.50.125(G) is not appropriate because gross annual revenue is not a measure of the business's profitability, and the proposed 20.2.50.125(G) lacks record support and is beyond the Board's rulemaking authority to confer enforcement authority to NMED.

319. Based on the evidence presented, the Board finds IPANM's proposed version of 20.2.50.7VV and 20.2.50.125 NMAC is appropriate and should be adopted. The fifty-employee cutoff provides the necessary relief for small business in New Mexico.